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Conscience  
and  
Conscientious Objections

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VRIJE UNIVERSITEIT

# Conscience and Conscientious Objections

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad Doctor aan  
de Vrije Universiteit Amsterdam,  
op gezag van de rector magnificus  
prof.dr. L.M. Bouter,  
in het openbaar te verdedigen  
ten overstaan van de promotiecommissie  
van de faculteit der Wijsbegeerte  
op maandag 12 februari 2007 om 10.45 uur  
in de aula van de universiteit,  
De Boelelaan 1105

door

Anders Schinkel

geboren te Kampen

promotor: prof.dr. A.W. Musschenga

*For my parents*



“If someone says, ‘Do you then believe that the Idea of the Good exists?’ I reply, ‘No, not as people used to think that God existed.’ All one can do is to appeal to certain areas of experience, pointing out certain features, and using suitable metaphors and inventing suitable concepts where necessary to make these features visible.”

IRIS MURDOCH, “On God and Good”

“[I]t seems to me impossible to discuss certain kinds of concept without resort to metaphor, since the concepts are themselves deeply metaphorical and cannot be analysed into non-metaphorical components without a loss of substance. Modern behaviouristic philosophy attempts such an analysis in the case of certain moral concepts, it seems to me without success.”

IRIS MURDOCH, “The Sovereignty of Good Over Other Concepts”





## Preface

Thanks are due to many people, without whose support (of whatever kind) I could not have written this book. First of all, I owe many thanks to my parents for the important part they played in the formation of my conscience. The first resource for a philosopher is his own experience. Therefore, it is fortunate (from an academic point of view, at least) that I am not too good a person, in which case I would have had much fewer experiences of conscience to work with; of course it is equally fortunate, for the same reason, that I am not too bad a person. Secondly, special thanks are due to Bert Musschenga, for his sympathetic support and gentle guidance, to my former 'roommates' Govert Buijs and Jos Kole for inspiring and interesting (dissertation- and non-dissertation-related) conversations, to Dick van Lente, Kees Schinkel and Willem Schinkel, for their important and helpful comments in various stages, to Eva Moraal, for listening and for simply being there, and further, for various reasons, to Jonathan Jacobs, Heinz Kittsteiner, Arend Soeteman, and Ben Vermeulen. Thirdly, I would like to thank Nynke Eringa-Boomgaardt for telling me her private story so candidly and for allowing me to use it in my dissertation, as well as the Dutch Minister of Defence for allowing me to make use of conscientious objector files from the Defence Archives. I am grateful to the staff at these archives in Kerkrade, who were extremely helpful. Thanks are due to everyone at Amsterdam University Press, but especially to Patrick Weening, for patiently making one pdf after another. Fourthly, I would like to thank everyone who contributed to this book in some other way: Jan Boersema, Jan Branssen, Patrick Delaere, Lasse Gerrits, Michel Heijdra, Lena Hoppe, Dorothee Horstkoetter, Rik van Lente, Leonie le Sage, Huib Looren de Jong, Annemarie Kalis, Ton van Prooijen, Angela Roothaan, Christiane Seidel, Haroon Sheikh, Rico Sneller, Jan Steutel, Jan van der Stoep, Ad Verbrugge en Henk Woldring.

Next: apologies. I apologize to everyone who should have been mentioned above, but was not. To those who feel that, in this day and age, it is no longer possible to read books of this size, I offer my humblest apologies. Anyone who can square it with his or her conscience should feel free to pass over certain parts more quickly. I also apologize for horrible, yet practical, references like Hobbes (2000) or Aristotle (1985); original dates can be found in the References section. Finally, I apologize to the letters 'U' and 'X' for their not being represented in the References section.



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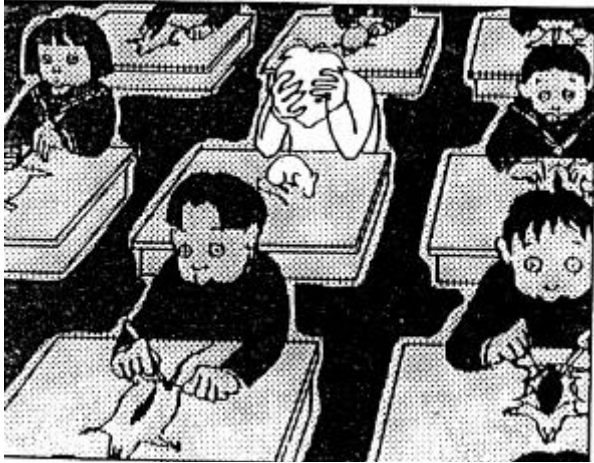


# General introduction

## I.1. ABOUT THIS BOOK

### i.1.1. The main question

Please take a moment to look at the picture below.<sup>1</sup>



What do you see? When *I* saw it for the first time, I immediately saw ‘a conscience in distress’, so to speak. But then I was searching the internet for pictures relating to conscience, and besides, when you spend years writing a book about conscience and conscientious objections, it is hardly surprising that conscience is the first thing that springs to mind in a case like this. Maybe someone else will see distress of another kind. Maybe the kid is simply scared out of his wits, unable to stand the sight of blood, let alone internal organs. Or maybe he has a mouse or a rat for a pet at home, and the thought of dissecting the same kind of animal disturbs him so much that he cannot do it. So there are different reasons why the boy might refuse to dissect the animal. Some might be grounded in conscience; for instance, the boy might feel that it is morally wrong to use animals in this manner. Animals like these have a life of their own, which they can enjoy. For this reason, the boy might think that we have no right to take their lives for our own purposes, and as a consequence he might have conscientious objections

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<sup>1</sup> I once found this picture on the internet, but unfortunately I have not been able to find it again, so I do not know who to thank for it, or who owns the copyright.



against participating in this practice.<sup>2</sup> But other reasons (need) have nothing to do with conscience. That he cannot stand the sight of blood provides a powerful reason not to dissect an animal for the boy, but it is not grounded in conscience.

Are refusals to dissect for any of these reasons on an equal footing for the *teacher*, who has to decide how to react to them? Is a conscientious objection to be taken more seriously than a nonconscientious one? Traditionally, in Europe and the United States, people have thought so for a long time; many still do. But why is it that when someone conscientiously objects to a generally accepted demand made of everyone in a particular situation or meeting established criteria, this is seen as at least a potential ground for exemption? What power does the word ‘conscience’ possess that the words, say, ‘I don’t feel like it’ do not?<sup>3</sup> To pose these questions is to inquire about the legitimacy of conscientious objection. This question can be posed in special contexts, and for conscientious objection in general. In the latter case, we want to know whether conscience can ever provide a legitimate ground for exemption from a generally accepted demand, the legitimacy of which is not itself a matter of dispute.

Some people feel that there is (virtually) no place for conscientious objection(s) in certain contexts, like medicine, for instance.<sup>4</sup> The cartoon below states the point beautifully.<sup>5</sup>

---

<sup>2</sup> See <http://www.animal-law.org/srco/stdrts.htm>, and the book by Gary L. Francione and Anna E. Charlton referred to there, *Vivisection and Dissection in the Classroom: A Guide to Conscientious Objection*, American Anti-Vivisection Society, 1992 and 1996 (supplement).

<sup>3</sup> Or, instead of ‘I don’t feel like it’, some stronger reason.

<sup>4</sup> See Savulescu (2006).

<sup>5</sup> The cartoon is by Stuart Carlson and comes from the May 20, 2005 editions of the Milwaukee Journal Sentinel, at <http://www.jsonline.com/story/index.aspx?id=327357>.



But is conscientious objection something that can be confined to specific spheres? Do we want people to switch their conscience on when entering one sphere, and off when entering another? Even if we admit that conscientious objection may be more problematic in certain contexts than in others, can we say *a priori* that it has no place in certain contexts? It cannot be maintained that conscientious objection in medicine will *always* conflict with (other) human rights, let alone in such a way that the latter must necessarily prevail. If it is true, then, that particular conscientious objections may be legitimate in any context, this also means that to deny the legitimacy of conscientious objection as such in particular contexts is in fact, indirectly, to question the legitimacy of conscientious objection in general.

'Context' is an ambiguous term. We may speak of conscientious objection in the context of medicine, or that of civil service, or the military. But we might also speak of conscientious objection in the context of abortion, gay marriage, or compulsory military service. We then come closer to what is objected against. There are people who doubt the legitimacy of conscientious objections in particular contexts in this sense. For instance, they may feel that civil servants do generally have a right to conscientious objection, but not in the context of gay marriage. It was the Dutch case of a registrar refusing on grounds of conscience to marry a gay couple, incidentally, that more or less gave rise to the project of which this book is the result. This case provoked fierce reactions. Some argued that as a civil

servant, the registrar simply had to execute the law. But it was quite clear that it was the fact that the conscientious objections concerned *gay marriage* from which disapproving reactions drew their force and inspiration. The new law allowing gay marriage had been hailed as a victory over unenlightened discriminatory thought and practice – how could we then allow a registrar not to marry gay couples because of conscientious objections? Like doubts concerning the legitimacy of conscientious objection in certain general contexts, doubts such as these indirectly question the legitimacy of conscientious objection as such.

Finally, people may be concerned about the contents of particular conscientious objections. It has often been claimed that in the twentieth century a ‘new’ kind of conscientious objection developed, that posed (and still poses) an unprecedented challenge to the state. This conscientious objection is supposed to be new in three senses: 1) it is mostly secular, rather than religious; 2) it is practised on a far greater scale; 3) it is not confined to the context of military conscription, but may occur in any context.<sup>6</sup> The observation that we are now faced with a ‘new’ kind of conscientious objection – an observation which can be challenged in various ways, but I will come to that later – does not of itself lead those who make it to the conclusion that the legitimacy of conscientious objection has become problematic. But many authors agree that conscientious objection has become harder to define and harder to distinguish from other kinds of objection.<sup>7</sup> Even if the legitimacy of conscientious objection is not in question, its privileged status *is*.

All this asks for a philosophical foundation of conscientious objection. The concept is still used, perhaps more than ever; it is embodied in legislation – but what is its foundation? How pressing this question is has much to do with changes not just in the practice or the perception of conscientious objection, but also, more fundamentally, with changes in people’s conception of conscience. I will expand on this in the next section.

---

<sup>6</sup> Moskos and Chambers (1993), 3: “What we call the ‘new conscientious objection’ differs from the old in motive, size, and extent.” Many other authors than these or the contributors to Moskos and Chambers (eds.) (1993) have made similar observations. On [http://www.ipas.org/english/press\\_room/2006/releases/04032006.asp](http://www.ipas.org/english/press_room/2006/releases/04032006.asp), ‘new conscientious objection’ is spoken of to refer to a change in what Moskos and Chambers call ‘extent’.

<sup>7</sup> And not just authors on the subject find conscientious objection an elusive concept. In 2003, the Dutch Secretary of State for Social Affairs declined to include a clause on conscientious objection in a law (Wet Werk en Bijstand) defining, among other things, what kind of work unemployed would have to accept if it were available to them. The reason was that “a concept like ‘conscientious objection’ is strongly subjectively coloured, and therefore hard to define”. See <http://www.st-ab.nl/wetwvbs86.htm>.

For now, it is enough to establish that the legitimacy of conscientious objection is (indirectly) challenged by certain reactions to conscientious objections in particular contexts, and that this situation gives rise to the question as to a philosophical foundation of conscientious objection.

This is what this book is about. The book is the product of my search for a philosophical foundation of conscientious objection. The question whether there is such a foundation requires interpretation; it is not self-evident what we should understand by it. I have interpreted it as follows:

*is there some characteristic of conscientious objections that sets them apart from other kinds of objection, such as to earn conscientious objections a special respect and corresponding treatment?*

If I find a characteristic that distinguishes conscientious objections from other kinds of objection, *and* justifies a privileged treatment of conscientious objections, I have found a philosophical foundation of conscientious objection. In the course of this book, I answer the above question by answering three more specific questions out of which it is built up:

- 1) what are conscientious objections?
- 2) is there something about them that sets them apart from other kinds of objection?; if so,
- 3) is this something that calls for a special respect and treatment, or can justify such respect and treatment?

To be able to answer the first of these, it is essential (I will argue) to have an understanding of both conscience and freedom of conscience. For this reason, the book is divided into three parts, one about conscience, one about freedom of conscience, and finally a part about conscientious objection. The latter contains the concluding chapter of the book, in which I will formulate my answer to the question as to the philosophical foundation of conscientious objection. A more detailed plan of the book will follow later, but first I will turn to an explanation and justification of the uncommon approach I have taken.

### **i.1.2. (Why) my approach(?)**

It may be thought that it cannot be too difficult to determine what conscientious objection is, or that at least the method of finding a definition of conscientious objection should be easily ascertained. Is it not merely a matter of finding the best possible (but at least an acceptable) definition of conscience, so that conscientious objection can then be defined as objection on grounds of conscience, so-and-so understood? If we forget for a moment that there is more to the phenomenon of conscientious objection than being objection on grounds of conscience, this suggestion is not far off the mark.

An adequate understanding of conscience (which is not necessarily a 'definition') is indeed at the core of a proper understanding of conscientious objection. But to arrive at such an understanding of conscience is no trifle. Why not?

First of all, notice that 'conscience' plays no role of significance in either philosophical ethics or psychology in the twentieth century.<sup>8</sup> It is still an important concept in Freud's psychoanalysis, but after that its significance dwindles. M. Kroy rightly observes that in the twentieth century as a whole (or that part of it that lay behind him when he made his observation), "academic psychologists generally deny the term conscience (...) any legitimate place in their theories".<sup>9</sup> A slight revival of interest in conscience seems to be occurring in philosophy, but this interest is primarily historical in nature.<sup>10</sup> Recently, in psychology, Grazyna Kochanska has breathed some new life in the concept of conscience.<sup>11</sup> There have been some authors who pleaded for a rehabilitation of the concept of conscience.<sup>12</sup> Others felt that more than an intellectual or philosophical rehabilitation was called for. Paul Lehmann wrote: "The semantic, philosophical and theological pilgrimage of conscience begins with the Greek tragedians of the fifth century before Christ and ends with Sigmund Freud (1856-1939). It is a moving, tortuous record of decline and fall which forces upon us in our time the frankest possible facing of a sharp alternative: either 'do the conscience over' or 'do the conscience in!' (...) By the *decline* of conscience we mean the fact that the power of conscience to shape behavior (...) has steadily lost persuasiveness and force. By the *fall* of conscience we mean the rejection of conscience as formative of, or important for, ethical behavior."<sup>13</sup> I mention all this merely

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<sup>8</sup> See 7.1.1.

<sup>9</sup> Kroy (1974), xii. See also Klein (1930), 247: "Curiously enough, despite their alert interest in motivation, psychologists seem to have overlooked [conscience] in their analyses of mental phenomena. As a rule the topic is not even mentioned in current texts."

<sup>10</sup> See, for instance, Kittsteiner (1995), Schalow (1998), Murphy (2001), Andrew (2001), Langston (2001), Feldman (2001), Kukla (2002), Van Vugt (ed.) (2003), and Bosman (2003).

<sup>11</sup> Kochanska (1991), Kochanska (1994), Kochanska and Aksan (2004), Forman, Aksan, and Kochanska (2004), Kochanska, Forman, Aksan, and Dunbar (2005), and Aksan and Kochanska (2005) (among others).

<sup>12</sup> See especially Hammond (1993); Langston (2001) also seeks a rehabilitation of the concept.

<sup>13</sup> Lehmann (1963), 327-328. Lehmann's analysis is adopted by Walter Conn in the paragraph "Christian Conscience: Decline and Fall" of his *Conscience: Development and Self-Transcendence* (1981), and it underlies Basil Mitchell's remark that "The man of traditional conscience does indeed face a dilemma. He must be prepared to choose between modifying his conscience and questioning his secular assumptions." (Mitchell [1980], 92). The 'decline and fall' view of the conceptual history of conscience laments the 'fact', we might say, that what was once thought to be golden

to show that there have been signs of a ‘crisis’ in the (conceptual) history of conscience.

That does not mean that there is a lack of concepts of conscience to study, choose from, or improve upon. On the contrary, we are faced, both diachronically and synchronically, with a plurality of concepts of conscience.<sup>14</sup> This was in fact one of the factors that led to the rejection of conscience by philosophers and psychologists. If one person says conscience is the voice of God, another that it is a natural instinct, and again another that it is a function of the super-ego; and again, if one person maintains that it is infallible, while another claims that it cannot be trusted under any circumstances, would it not be better to abandon the concept altogether? That is tempting, but it is not self-evident that this is the most sensible course of action. What to do depends on the causes of the plurality of views of conscience, and on the nature of this plurality. Perhaps we can come to understand how this plurality (especially in its ‘synchronic’ form) came about, in a way that affects the seeming incompatibility of the diverse concepts. A first, intuitive, sign that a diversity of concept(ion)s of conscience need not lead to despair regarding the possibility of finding an adequate concept, is the fact that we can virtually always recognize something in those diverse conceptions – we can relate it to our own experience of conscience. This holds true even for sarcastic definitions of conscience like: “Conscience is the inner voice that warns us somebody may be looking” (Henry Louis Mencken), or this one, which I found on the internet as a t-shirt design: “Conscience: that part of the psyche that dissolves in alcohol”.<sup>15</sup> When we come to philosophical definitions of conscience, we see that these tend to (over)emphasize (a) certain aspect(s) of the experiential phenomenon of conscience at the cost of others. Butler placed extreme emphasis on the authority of conscience; some Enlightenment philosophers on reason, the social nature of conscience, or both; and Romantic philosophers exaggerated the heroism of the individual, anti-conventional conscience. Sometimes the stress on a particular aspect is

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was subsequently held to be silver, and finally discarded as tin. The curious thing about this view is that it seems to confuse the level of thought with that of the reality of conscience; as if conscience itself *was* divine when people held it to be divine – as if conscience lost its value when its concept was devalued. Lehmann does indeed seem to think so. (Note, by the way, that conscience was longer held to be sacred than divine.)

<sup>14</sup> ‘Synchronically’ must not be taken too literally. I only mean to draw attention to the fact that we do not have to go further and further back in time to gather concepts of conscience, but that there is also a variety of recent concepts (from the second half of the twentieth century). In other words: there is a variety of non-outdated concepts of conscience.

<sup>15</sup> I have not checked whether Mencken really said or wrote this, or whether the remark is merely attributed to him, but that does not really matter here.

primarily a theoretical oversight, or a reaction against other, equally one-sided, concepts; more often there will be a relation to the (author's) time- and context-dependent experience of conscience, in which case a concept may be more or less adequate to a particular time, place, and social class, but thereby also a victim of parochialism. However this may be, that concepts emphasize different aspects of a phenomenon does not mean that there is no such phenomenon. I have not yet demonstrated that this is what different concepts of conscience tend to do, but I believe the history of expressions of and thought about conscience I present in the first part of the book will vindicate this view.

I am not the first to remark upon the tendency of concepts of conscience to overemphasize, even absolutize, one aspect of conscience. Erhard Mock, after his study of the history of thought about conscience, states:

“Die Beispiele aus der Begriffsgeschichte des Gewissens verweisen zwar sämtlich auf die Spezifikation einer allgemeinen Anlage des Menschen, Sollensforderungen zu erleben und sich so zu verwirklichen, sich selbst darzustellen, aber sie tun dies jeweils unter einem wesenhaften und definierenden Aspekt. Bald ist das Gewissen göttliches Orakel, bald höchste Verstandesinstanz, dann allein dem Gefühl, dem Willen oder Trieb unterworfen, dann aber wird es wie ein Instinkt gesehen. Man sagt, es sei unfehlbar, oder aber man könne ihm weniger trauen. Angesichts solcher Disparitäten der Begriffe empfiehlt sich zur Beschreibung des Phänomens ‘Gewissen’ eine weitgehende *Formalisierung* und *Funktionalisierung*.”<sup>16</sup>

He makes a double point: 1) concepts of conscience tend to overemphasize one aspect of conscience at the cost of others, and 2) this aspect is taken to be the *essence* of conscience. But note that Mock also takes all these concepts together as an indication of “the specification of a general disposition of man to experience ‘oughts’, and to realize and constitute themselves through these”. His suggestion is that we replace *essentialism* by *functionalism*. People may differ about what constitutes the essence of conscience, but we can acquire a unified view of conscience by looking at its (psychological) function. Formalism is a concomitant of functionalism: instead of focusing on the *contents* of conscience (which is what essentialists also tend to do) we focus on formal characteristics, e.g. the fact that in conscience people experience an ‘ought’, whatever this may be, and wherever it may come from. So functionalism tries to solve two problems: that of the theoretical disagreement about the nature of conscience, and that of the divergence in the contents of different people’s consciences. If we define conscience, essentialistically, as the voice of God in man, this divergence presents a huge problem. If, on the other hand, we define conscience as a function of the

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<sup>16</sup> Mock (1983), 61.

personality (as the most important advocate of a functionalist concept of conscience, Niklas Luhmann, does), the problem evaporates.

There is much sense in functionalism. However, it falls victim to one of the problems it tries to avoid. Whereas it is meant to improve upon the situation that there is a plurality of one-sided concepts of conscience – which, in one sense, it still does – it also adds its own one-sided definition of conscience to the already existing pile.<sup>17</sup> Functionalist concepts of conscience are one-sided, in that they place exclusive emphasis on the aspect of the *function* of conscience. But conscience is not exhausted by its function; not even things designed for their functionality are exhaustively defined by their function, and conscience is not of that kind. Art may be functional in many ways, but it is certainly more than that – and sometimes it is hard to see how it *is* functional, which is also true of conscience.

Another problem with functionalist concepts of conscience has to do with their background in the psychology of conscience. (Psychological views of conscience figure in this book mainly through their influence on functionalist concepts of conscience. I will explain the reason for this further on in this introduction.) Because they focus on the function of conscience in the personality (in a ‘personal system’), they tend to place too much stress on the connection between conscience and the self; an appeal to conscience is then described as an attempt to preserve the integrity of the self. This is not altogether wrong, but in my view it does not capture what is most ‘essential’ to such appeals, and it does not do justice to people’s self-understanding. I will argue for this in chapters 8 and 15.

“Of course it does not capture what is most ‘essential’ to appeals to conscience,” an advocate of functionalism might object; “we wish to avoid essentialism.” I would say that we should take care to avoid a particular *kind* of essentialism, while also avoiding the problems of functionalist approaches.

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<sup>17</sup> Functionalism improves somewhat upon other concepts of conscience, but not enough. Many authors on conscience start by commenting on the enormous variety of concepts of conscience. Some do not take this problem seriously enough; others take it too seriously. The first gladly write about the conceptual history of conscience, saying that for A conscience was this, and for B conscience was that, without attempting to seek unity in the diversity. But what is the constant in all these concepts? This question is raised in Kittsteiner (1995), 289 (see chapter 8). But Kittsteiner takes the problem *too* seriously, reaching relativist conclusions. Unlike Kittsteiner, I believe that ‘syneidesis’ in Philo and ‘conscience’ in Adam Smith are connected by more than just etymology. Those who do not take the problem seriously enough feel free to simply add their own concept to the plethora of existing concepts, thus adding to the problem, rather than addressing it. Functionalism does address the problem, in the sense that it seeks a constant in all manifestations of conscience; something that all concepts should be able to accommodate. Yet it is one-sided in its own way, and in that sense merely another concept of conscience that overstresses a single aspect.



At the same time, any new approach to conscience should learn from the advantages functionalist approaches have over ‘traditional’ ones. That means that we must accept formalism – *to a certain extent*. We need to avoid identifying (the essence of) conscience with some aspect of some concrete manifestation of conscience; we must also avoid identifying conscience with particular contents of conscience (e.g. a specified set of moral principles). That said, we should realize that conscience becomes a meaningless notion if we cannot at least tentatively delineate a certain class of experiences that we can call experiences of conscience.<sup>18</sup> For instance, we must note that these are moral-religious experiences.<sup>19</sup> This is still a formal characteristic, but one that encroaches upon ‘substantial’ territory – that of the contents of conscience. But it is hard, if not impossible, to work towards a new approach of the subject by working away from existing approaches one step at a time. In view of the plurality of concepts of conscience (with all their problems) on the one hand, and the rejection of the concept of conscience by mainstream philosophy and psychology on the other, I believe it is best to start anew, from a radically different perspective. A rejection of the concept of conscience is, logically, a rejection of conscientious objection.<sup>20</sup> Many twentieth-century concepts of conscience cannot support legal provisions for conscientious objection, but would rather destroy its legitimacy if they were adequate.<sup>21</sup> The remaining concepts, I will argue, are unable to provide conscientious objection with the right kind of foundation (if with any at all).

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<sup>18</sup> It is doubtful whether such an identification could be accomplished by means solely of the criterion of the function of conscience in the personal system, but even if this were possible, other disadvantages still cling to this method. For instance, it will tend to locate the importance of conscientious objections in the wrong place. This is discussed in chapters 15 and 16.

<sup>19</sup> I say ‘moral-religious’, because conscience is not confined to the sphere of either morality or religion, narrowly conceived. In this book I will use a broad notion of morality and Paul Tillich’s broad notion of religion. Conscience as a moral phenomenon is then also a religious phenomenon.

<sup>20</sup> Someone who rejects the concept of conscience may still defend (on pragmatic grounds, for instance) that it is best to exempt ‘conscientious objectors’ from that to which they object, but this view would then have to be supported on grounds wholly unrelated to the ‘conscientiousness’ of the objections. It is likely that the class of people eligible for exemption would then include others than ‘conscientious’ objectors – a term which would have become redundant.

<sup>21</sup> For example, Klein (1930), 261-262, argues on the basis of his analysis of the psychology of conscience that conscientious objectors (to military service) have no stronger claim to exemption than other objectors: “Given irrational conditioning, the resulting motivation of conscience will be irrational or at least non-logical. (...) An individual objecting to war on the purely logical grounds of its stupidity and wastefulness should be entitled to just as much consideration by a patriotic draft board as the conscientious objector on religious grounds.”

For this reason, it is of critical importance to approach conscience in the right manner.

So we start at the beginning – or, better put: *a* beginning, for there is not just one place of departure for where we wish to arrive. Let us start with ‘conscience’. Forget all you know or think you know about conscience for a moment; that is, do not attend to these things. ‘Conscience’ is, first of all, a *word*. The next question is: how is this word used?, or: what kind of word is it? To determine this I make use of the distinction between symbols and signs as made by Michael Polanyi, with similar distinctions made by Paul Tillich and Eric Voegelin. Signs have meaning because they *indicate* something; symbols do not indicate, but *symbolize* something. (I will look into the details of Polanyi’s theory of symbols in the second part of this introduction.) ‘Conscience’, I claim, must first of all be understood as a symbol expressive of a certain class of experiences. When someone appeals to conscience, (s)he does not (even if [s]he thinks [s]he does) *indicate* a certain ‘thing’ in existent reality, called ‘conscience’. Rather (s)he expresses experiences of a certain class by means of the symbol of conscience. Once we speak of a symbol of conscience, we can take the next step and notice that the word ‘conscience’ itself need not be used for us to be able to recognize certain expressions as symbolic expressions of conscience. Equivalent experiences can be expressed in equivalent symbolizations. (The terminology of ‘equivalences’ derives from Voegelin.) The ‘symbol of conscience’ comprises all symbolizations of conscience. It is a rather formal framework – a certain degree of formalism is necessary – which is designed to be able to accommodate all symbolizations of conscience. In its terms we ought to be able to interpret all experiences of conscience.<sup>22</sup> But it does say something about the ‘contents’ of conscience. I distinguish between three core elements of the symbol of conscience, the first of which is the most important: the element of ultimate concern. The other two are in a sense subordinate to this one; they are the element of the witness, and the element of intimacy. I will elaborate on this in chapter 1. These elements are elements on the level of experience, as well as that of symbolization. The element of ultimate concern entails, among other things, that there is reference to a superior moral-religious standard, or that an awareness of such a standard is ingredient in the experience. If this is not the case, we are not dealing with an experience (or symbolization) of conscience. So the core elements of the symbol of conscience provide substantial criteria to distinguish experiences and symbolizations of conscience from other kinds of experience and expression. They also highlight the unity in the (diachronic and synchronic)

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<sup>22</sup> For Whitehead, the task of ‘speculative philosophy’ was to provide a coherent framework of concepts in terms of which all of our experiences could be interpreted.

diversity of experiences and expressions of conscience, as well as, finally, in the diverse concepts of conscience.

The claim that conscience must first of all be understood symbolically is joined by an historical claim, namely that in European history symbolic expressions of conscience gradually give way to indicative uses of the term. That is, there are symbolizations of conscience before the predecessors of the term ‘conscience’ become the standard vehicle to express experiences of conscience; then there is a period in which (predecessors of the term) ‘conscience’ is primarily used symbolically; this gradually changes, until ‘conscience’ is primarily used indicatively – not as a symbolic expression of a certain class of experiences, but as a sign indicating some existent ‘thing’. I speak of this transition as a development from symbol to doctrine. This change provides the main (background) explanation both for two waves of criticism of conscience and its twentieth-century dismissal, and for the genesis of a great range of different concepts of conscience. It is the most important way in which conscience lost (some of) its meaning. The entire first part of the book is devoted to an elaboration (and in some respects a qualification) of this thesis. So my approach is intended to help us understand not only conscience, but also the loss of meaning involved in the rejection of conscience *and* in the conceptualization of conscience. It is a *meta-approach* to conscience (in that it transcends particular historical manifestations of conscience), as well as to reflection on conscience (which it helps us interpret in terms of the history of experiences and expressions of conscience).

In chapter 8 I develop my own concept of conscience, a *fluid* concept, on the basis of the above approach. This concept entails an awareness of the symbolic nature of conscience, but provides us with the clarity of a single definition, which an analysis of the symbol cannot do. It is important to notice the difference between this concept and other concepts of conscience. It is not simply one more concept added to the heap, but ‘a concept to replace all others’. Of course, most concepts of conscience were probably intended to replace all others, but they could not do so because, like those others, they emphasized a single aspect of conscience.<sup>23</sup> My concept of conscience is designed to avoid that danger, informed as it is by the symbol-approach to conscience. It should be able to cover all experiences of conscience.

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<sup>23</sup> It is no use trying to add them all up to complete the picture. Some concepts simply do not add up, but rather subtract from one another. Others may be added up, but the result is not conscience. For instance, we may add up a concept that pictures conscience as an intellectual power to a concept that holds it to be a matter of the emotions alone, to arrive at a concept of conscience as both an intellectual and an emotional matter. But this still does not tell us what it is, and it does not transcend the level of psychology. A sum of psychological ‘facts’ cannot exhaust the definition of something like ‘anger’, let alone that of conscience.

For now, this explanation of my approach and the reasons for adopting it should suffice. I will now turn to the plan of the book.

### **i.1.3. Plan of the book**

As I said before, the book consists of three parts. Part I deals with conscience, part II with freedom of conscience, and part III with conscientious objection. The first part contains chapters 1 to 8, the second comprises chapters 9 to 12, and chapters 13 to 16 make up the third part. Parts II and III are both preceded by a short introductory text, intended as a transition to those parts.

#### *i.1.3.1. Part I*

Chapter 1 introduces the symbol of conscience, discusses its emergence at the hand of Ancient Egyptian texts and Plato's *Apology of Socrates*, and analyzes the symbol into its three core elements. The chapter ends with a discussion of two imaginative (sub)symbols of conscience: the 'worm of conscience', and the 'voice of conscience'.

Chapters 2 to 6 all have 'Between symbol and doctrine' as the first part of their title. In these chapters I present my perspective on the history of expressions of and thought about conscience from Ancient Greece to the nineteenth century of Bentham, Darwin, and Freud. The main concern of these chapters is with the gradual transition from a symbolic to an indicative understanding of conscience, and the loss of meaning that results from that. This loss of meaning can occur in radical form, as when Bentham dismisses conscience as a fiction, or less visibly, in the form of inadequate concepts of conscience. I will also attend to persistent symbolism and revivals of symbolism – symbolizations of conscience occur side by side with the use of indicative terms to define conscience.

Chapter 2 discusses the concepts of 'compactness' and 'differentiation', the development from a compact to a more differentiated language of conscience, and its relation to the development from symbol to doctrine. Apart from some references to Ancient Egypt, it covers the period from, roughly, the fifth century B.C. to the early Middle Ages.

Chapter 3 starts by continuing the story of the development from compactness to differentiation with a discussion of the (origins of the) scholastic distinction between 'synderesis' and 'conscientia'. Despite the continuity, this also constitutes a break with the foregoing period. The influence of the scholastic verbal differentiation of conscience cannot be underestimated. Its impact far outlived the Middle Ages (showing the relativity of such periodizations); the distinction (implicitly) survived in Protestant casuistry, for instance, and for others scholasticism provided a counterposition with which to contrast their own views.

The development of (popular) expressions of and (popular) thought about conscience in certain Protestant groups provides the background for

the first wave of criticism, launched in the seventeenth century by Hobbes and Locke. Chapter 4 deals with their views on language, conscience, and morality, as these are inextricably linked.

The result of their critique was not that the concept of conscience was abandoned (though some in the empiricist tradition came to prefer the term ‘moral sense’), but rather that a new anchorage was sought for conscience. ‘Nature’ (first with a capital ‘N’, but soon enough with a small ‘n’) and Reason took the place of God, as I will show in chapter 5. Joseph Butler, but especially Adam Smith and Immanuel Kant, are extensively discussed there. It is interesting to see how conscience is geared to the purpose of the perfection of man and society. In this connection, we will see how Enlightenment thinkers made use of what we might call an ‘inverted Stoicism’. The Stoic withdrawal from what we cannot control (the external world) into what we can (arguably) control (ourselves) is turned around to make individual self-command crucial to the project of shaping society.

Hobbes and Locke also provided the impetus for the development of a ‘science of man’, of which the ‘science of morality’ was an (if not the most) important part. We must see the development from ‘Nature’ to ‘nature’ in this light. I discuss this in the first section of chapter 6, a section centered around David Hume. This leads up to what chapter 6 is primarily concerned with: the second wave of criticism, in which Jeremy Bentham is a key figure. He could not but think of conscience indicatively, and therefore he could not but dismiss it as a fiction – for there was no such ‘thing’. Unlike Bentham, Darwin and Freud did find something. Darwin found a ‘highly complex sentiment’; Freud settled for a function of the superego. Both their views contributed to a devaluation (and in some cases dismissal) of conscience.

Chapter 7 discusses late nineteenth-century and twentieth-century concepts of conscience. Most of them tend towards functionalism, if they are not simply exponents of it. All depart significantly from traditional views – in particular the ‘faculty view’ of conscience. The main thinkers discussed are John Dewey, Martin Heidegger, Gilbert Ryle, and Niklas Luhmann, the latter of whom is most important to this book.

In chapter 8 I introduce my own (fluid) concept of conscience, explain its relation to the symbol of conscience, and elucidate the various elements inherent in the concept. Among other things, I will attend to the development of conscience and postulate ‘openness’ (in two forms) as one of its main ends.

### *i.1.3.2. Part II*

Chapter 9 explores the conceptual relations between conscience and freedom of conscience. In particular, it points out a double inversion of meaning that occurred in the conceptual history of conscience. This was crucial to the rise of notions of freedom of conscience.

Chapter 10 deals with the two-dimensional problem that is at the core of both the concept and the practice of freedom of conscience. This is the problem of order, which divides into the problem of political order and that of order in people's minds. The latter can also be called the problem of subjectivity. While the first dimension is quite stable, the second is not. The problem of subjectivity starts out as a problem in its own right; then it becomes subordinate to the problem of political order. In the twentieth century it becomes psychologized. Because of that, it can be seen both as subordinate to the problem of political order, and once again as a full-fledged second dimension. The problem of order is highly important for the subject of this book, because any theory of conscientious objection will have to address it.

In chapter 11 attention goes to the dynamics of order; that is, to the interplay between ideas, ideals and 'stubborn fact', the historical contingencies that played their part in aiding or obstructing the advent of notions of freedom of conscience. The first part of the chapter (after the introduction, so 11.2) deals with the balance of the influence of idealist and pragmatic considerations with respect to the transition from a negative concept of toleration to a positive concept of freedom of conscience. The second part (11.3) is devoted to the question how freedom of conscience became the powerful symbol it still is today.

(Twentieth-century) solutions to the problem of order are the topic of chapter 12. Luhmann's conception of freedom of conscience takes centre stage, but despite its merits it is one-sided, it is flawed insofar as his concept of conscience is flawed, and in my view it does not provide us with the most desirable kind of foundation for conscientious objection, namely a principled rather than a pragmatic one.<sup>24</sup> Therefore, the chapter ends with a short section on how we should understand 'freedom of conscience'.

### *i.1.3.3. Part III*

Chapter 13 deals with what I call 'identifying aspects' of conscientious objection. Chapter 14 discusses further aspects of conscientious objection, in particular in relation to the state and the law. I present my understanding of conscientious objection, regarded from different perspectives. The crucial question here is what distinguishes conscientious objections from other kinds of objection. Historical examples (Socrates and Thomas More, among others) are used to show the presence of core elements of the symbol of conscience in conscientious objections, and to illustrate different aspects of conscientious objection.

In chapter 15 I turn to two case studies. The first case is that of conscientious objection to military service in the Netherlands, in the last ten

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<sup>24</sup> Luhmann's theory of conscientious objection is, basically, his theory of freedom of conscience.

years of conscription. The second is also a Dutch case, namely one of a registrar who conscientiously refused to marry a gay couple. The case studies should deepen our understanding of conscientious objection, and bring us closer to finding a philosophical foundation for it.

Chapter 16 is the final chapter. Here, I answer the question(s) posed in the first section of this introduction. It summarizes and brings to a conclusion the findings of the foregoing chapters.

## 1.2. REALITY, CONSCIOUSNESS, AND LANGUAGE

An unusual approach must come from somewhere. In my case, it is rooted in views about reality, man's place in reality, and man's relation to it through language, that depart from our usual habits of thought. Alfred North Whitehead's metaphysics, or ontology (or whatever one prefers to call it) provides the main background. This is further filled in by reference to thinkers whose work breathes largely the same atmosphere, like Henri Bergson and Eric Voegelin. With respect to language, Michael Polanyi's work is of particular importance. It is his theory of symbols that underlies my approach of conscience as a symbol. Paul Tillich's work also provides some useful insights into the nature of symbols, but in the course of this book it will soon enough become clear that my main indebtedness to his work lies elsewhere.

I do not expect every reader to accept all of what must here remain basic assumptions.<sup>25</sup> I cannot argue for them here, nor would I be able to argue for them as the authors above themselves have done. The final test for such views lies in the clarity they produce. If we are able to interpret much (preferably all) of our experience in terms of Whitehead's thought, this strongly speaks for it. But we must be willing to leave entrenched positions, to bracket 'common sense' insofar as this takes all kinds of things for granted, and to look beyond what only seems self-evident simply because we are used to it. The whole book is an invitation to look at conscience and conscientious objection in a particular way, to attend to it in such a way that we see things we would otherwise not notice. This entails an effort that is easily underestimated. The psychologist as well as the theologian will readily find himself back in his own trenches, because they prefer it to what appears to them to be no man's land.

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<sup>25</sup> They are not mere assumptions to *me*, but as it would take another book to argue for the views I will briefly present here, they are assumptions in the sense that they remain unargued for. (Except in the sense in which they argue for themselves by means of the insights they might occasion.) What I present here is not, at any rate, a set of assumptions underlying the rest of the book in the sense that if one of them is challenged, the whole building is in danger of collapsing. Rather, what I present here are some basic elements of a particular philosophical attitude and outlook on the world, one that I share, and from which my approach to conscience has sprung.

The danger of remarks such as the above is that it puts readers off. Let me assure them that there is no need to be put off. On reading the book one may also find that there is nothing unusual about the approach taken at all. At any rate, there should be much of interest in it even for those who cannot (entirely) go along with the views outlined below.

### **i.2.1. Reality as process**

Walking around in the world, it often feels like a giant room without ceiling, furnished with all kinds of ‘things’. This is what the world seems basically to be made of: *things* of all shapes and sizes. In school we are taught that all things consist of even smaller, indivisible, things: atoms. This is good news, for some substances, like water or other fluids, or gases, seemed to evade ‘thing-ness’. With our knowledge of atoms, however, we are able to see that fluids and gases, too, are made up of things. This is reality: a large collection of material things, made up of small, round, balls called atoms. This is tangible. *Real* and *tangible* are virtually synonymous. We, human beings, as well as other animals, are special, because we move around in this world, which seems otherwise (on the surface of it) rather static.

This picture, familiar though it may be, is an illusion, and a remnant of seventeenth- and eighteenth-century physics and philosophy. It is illusory not just because there are in fact earthquakes, tsunamis, wind, and other dynamic phenomena that belie the static appearance of things, but also because *everything* is dynamic. Reality has the character of a *process*.<sup>26</sup> Reality *is* process. Its basic units, Whitehead suggests, are not small ‘things’, but *events*. (He also speaks of ‘actual occasions’, or ‘actual entities’, among other terms.) Unlike ‘things’, events can interlock. Hume notoriously denied the existence of causality, because he could not see it. In his (later published) *Abstract to the Treatise of Human Nature* he presents the famous example of the billiard balls.<sup>27</sup> One ball ‘hits’ another, which then starts moving. We can see that the first ball is, at any further point in time, in a position closer to that of the second ball than its previous position. Then, they ‘touch’, after which the positions of the balls at any further point in time are such that the balls are further apart than the previous moment. We see all this, but what we cannot see is causality, which is a construct of the human mind.<sup>28</sup> Hume writes: “in no single instance the ultimate connection of any objects is discoverable, either by our senses or reason, and (...) we can never penetrate so far into the essence and construction of bodies, as to perceive the principle, on

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<sup>26</sup> The picture of Whitehead’s thought I am about to sketch draws on that in Schinkel (2004).

<sup>27</sup> Undoubtedly his hope was that at least some people would read *that* in its entirety. His strategy seems to have been successful; the example of the billiard balls is often referred to, though it is usually said to come from the *Treatise* itself.

<sup>28</sup> Hume (2000), 409-417.



which their mutual influence depends.”<sup>29</sup> In Hume’s thought, time and space are divided *ad infinitum*, leaving us with extensionless points and moments without duration. Not only causality evaporates in such a view, but so does movement. In my explanation of the example of the billiard balls, I deliberately avoided the term ‘movement’, because all Hume could have said about a ‘moving’ billiard ball is: “It is here; now it is here; and now it is here – but there is no such thing as movement.”<sup>30</sup>

Although ‘causality’ may be a common-sense notion, and its supposed non-existence an affront to common sense, the Humean picture of reality is still roughly that which we ‘inhabit’ today. Whitehead offers an alternative to this world-view that has dominated Western thought for the past centuries. Central to this worldview is the division between subject and object. Now, ‘object’ can have different meanings. It need not mean ‘*an* object’, in the sense of a thing. In practice, however, the division between subject and object has been just that: a division between the mental and the material, between things and perceivers-of-things. The latter (we) are also ‘endowers-with-meaning’; we give colour and meaning to a bleak and meaningless world. The division between subject and object characterizes both modern *and* postmodern thought; in the latter case it is drawn to its extreme.<sup>31</sup> Both use it in different ways. In modern thought, the division between subject and object is used to provide a foundation for the objectivity of knowledge; in postmodern thought it functions to demonstrate the impossibility of attaining objective knowledge. Whitehead rejected the *division* between subject and object, but used the distinction. To accept that rejection, as I do, has two consequences: it entails the rejection of the impossibility of ‘objective’ knowledge, but it also means that the idea that we passively perceive objective reality must be discarded. Instead, we must acknowledge that we are part of process, that we participate in reality, and that (despite of the degree of individuation we have reached) reality extends into us – we are a continuation of reality. Whitehead contrasts his own position on this point with Kant’s: “For Kant, the world emerges from the subject; for the philosophy of organism, the subject emerges from the world...”<sup>32</sup>

Whitehead uses the terms ‘subject’ and ‘object’ primarily to denote two sides of the experiential units he calls ‘events’, ‘actual occasions’, or ‘actual entities’. Another name he uses is ‘occasions of experience’. The structure of such an occasion is of a subject unified with objects in an experience. A ‘subject’ is not necessarily a human being; any centre of experience is a subject. Everything that is experienced is object for a subject.

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<sup>29</sup> Ibid., 257.

<sup>30</sup> Schinkel (2004), 42.

<sup>31</sup> See Latour (1993).

<sup>32</sup> Whitehead (1985), 88.

What is not experienced by me is not an object for me. We can speak of everything that enters into an experience as the *data* for that experience, but not once it has become part of it; it has then reached the status of object for a subject. Every actual entity, when it ceases to be actual (that is, when it is no longer ‘happening’) can become object in another event. Events ‘inherit’ the past insofar as it is relevant to them. This enters into the ‘concrescence’ that constitutes the event; this is a ‘growing together’ into unity of the various elements that enter into the event.

Events enter into relations with one another. They form *nexus*.<sup>33</sup> A nexus is a chain of events. Underlying our perception of solid things are chains of events. For instance, our ‘thing-chair’ is an abstraction from the underlying ‘chain-of-events-chair’. Chains of events that sustain a certain character over time form the basis of our perception of things. Thus, behind the veil of a seemingly static reality we find process.

### **i.2.2. Perception, consciousness, and truth**

That we see *things*, not process, not only has to do with the tendency of events to form nexus, but also with our perception and our mental functioning. There are different kinds of perception. Reality consists of nothing but events, which means that the world is full of experience. There are occasions of experience on a human level, but also on a quantum-level. Victor Lowe, Whitehead’s biographer, recalls: “When I asked him whether the emission of a single quantum of energy was an actual occasion, he replied, ‘Probably a whole shower of occasions.’”<sup>34</sup> Now, on that micro-level, neither we nor Whitehead would (have) like(d) to speak of ‘perception’ to characterize the experience of ‘quantum-subjects’. The same holds true on the already almost infinitely higher level of micro-organisms. Who has ever heard of perceptive plankton? But Whitehead thought that the term ‘perception’ suggested too much even for many cases of human experience. Both ‘perception’ and the term ‘apprehension’ as it is commonly used are “shot through and through with the notion of *cognitive* apprehension”.<sup>35</sup> Therefore, Whitehead introduces the term ‘prehension’ to signify apprehension “which may or may not be cognitive”.<sup>36</sup> This is a double strike. By using the term ‘prehension’ he avoids the danger of anthropomorphism in the description of non-human experience. At the same time, he draws attention to the fact that *human* experience is for the greater part noncognitive.

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<sup>33</sup> And also ‘societies’; when we should speak of a society or of a nexus depends on the way the events that build it are organized.

<sup>34</sup> Lowe (1988), 51.

<sup>35</sup> Whitehead (1938), 86 (my italics).

<sup>36</sup> Idem.

Whitehead analyzes prehensions into two (nonchronological) phases. In the *conformal* phase reality, insofar as relevant to the occasion, enters into the concrescence. Where inorganic actual occasions are concerned, nothing else seems to follow the conformal phase but a causally determined reaction. Things are different in organic occasions. Here, there is a second phase in which Whitehead distinguishes two subphases, the *supplemental* and the *mental* phase, which he speaks of as “the two higher originative phases in the ‘process’”.<sup>37</sup> In the supplemental phase, a certain emotional value is added to the contents of the first phase; for example: “shape acquires dominance by reason of its loveliness”. Another possibility is that colours gain intensity due to the contrast with other colours (which is what the bits of green in between the red meat at the butcher’s are meant to achieve). In the mental phase, finally, *eternal objects* (‘pure possibilities’) enter the equation, as well as more complex kinds of possibilities.<sup>38</sup> The mental phase is a phase in which possibilities and values are prehended; possibilities are evaluated as to their merits. This phase is an important source of creativity.

Prehensions are also analyzed into three elements: subject, object (prehended *datum*), and subjective form, “which is *how* that subject prehends that datum”.<sup>39</sup> The term ‘subjective form’ is closely bound up with the term ‘subjective aim’, the ‘goal’ of the subject (which Whitehead also calls a subject-superject, to indicate that the subject projects itself into the future). The subjective aim is the aim at a certain ‘satisfaction’, which is the completion of the process of concrescence, and thus of the event. The subjective aim determines the subjective form. There are many kinds of subjective form: emotions, evaluations, intentions, and also (cognitive) consciousness. Every prehension has a subjective form – even a negative prehension, in which the datum is rejected as an ingredient in the concrescence, in which case the subjective form of the rejection still contributes to the concrescence.

That Whitehead sees consciousness as a possible subjective form is important. It means, first of all, that consciousness does not characterize every prehension, every experience. Secondly, it means that ‘consciousness’ is a term denoting *how* we experience something. Whitehead is a bit sloppy in his use of the term ‘consciousness’, but in this context he intends it to be a characteristic of prehensions that are accompanied by a particular kind of

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<sup>37</sup> Whitehead (1985), 177.

<sup>38</sup> Eternal objects come in three kinds: mathematical shapes, *sensa* (red, sweet, heavy, etc.), and subjective eternal objects (disgust, approval, etc.); see Van Haeften (1999), 337. Eternal objects are ‘eternal’, yet they differ in their realization in actual occasions. See Whitehead (1938), 186-201. In a letter to Charles Hartshorne, Whitehead writes that “no eternal object in any finite realization can exhibit the full potentialities of its nature”.

<sup>39</sup> Whitehead (1985), 16.

awareness – we look around us and register a computer, a pile of papers, another pile of papers, a pile of books, yet another pile of papers, some pencils, and so on (depending on where we are, of course). We are cognitively aware of all this. We are easily led to think that this is the only form of experience, and that this is how we experience everything. Whitehead maintains that this is not the case (and modern psychology and neuroscience would confirm that). Conscious perception is the result of our mental functioning. “Mentality,” Whitehead says, “is an agent of simplification; and for this reason appearance is an incredibly simplified edition of reality.”<sup>40</sup> Our mental functioning is such that certain elements of experience are emphasized at the cost of others; it leads our attention. Hence, “consciousness is an emphasis upon a selection of (...) objects”, and it is “a mode of attention”.<sup>41</sup> As a result, a difference arises between the contents of the conformal phase of experience and those of the mental phase and the final satisfaction. This constitutes *appearance* for the occasion in question.

While Descartes thought that the clarity and distinctness of ideas was the best guarantee of their reliability, Whitehead turns this around. Clear and distinct ideas can only be found on the level of appearance; they are the result of simplifying processes, which result in “a mass of presuppositions about Reality rather than the intuitions of reality itself”. Whitehead adds: “It is here that the liability to error arises.”<sup>42</sup>

It is here, too, that ‘true’ and ‘false’ (in their common sense) become relevant notions. “Reality is just itself, and it is nonsense to ask whether it be true or false.”<sup>43</sup> So much is self-evident. But of appearance, of ‘presuppositions about reality’, it *does* make sense to ask whether they are true or false. “Truth is the conformation of Appearance to Reality. This conformation may be more or less, also direct or indirect.”<sup>44</sup> This is not a statement of naïve realism. Whitehead realizes that reality differs fundamentally from propositions about reality; this difference lies in the ‘mode of togetherness’ of their elements. The real greenness of the tree is in the tree in a totally different way from what the proposition ‘the tree is green’ suggests – as if there is a tree with green, as an afterthought, added to it. But truth does not apply to propositions alone. There is more to truth than the common notions of ‘true’ and ‘false’. “If we ask what is meant by ‘truth’, we can only answer that there is a truth-relation when two composite facts participate in the same pattern.”<sup>45</sup> There is a truth-relation when a baby

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<sup>40</sup> Whitehead (1964), 213-214.

<sup>41</sup> *Ibid.*, 182; 269.

<sup>42</sup> *Ibid.*, 269.

<sup>43</sup> *Ibid.*, 240.

<sup>44</sup> *Idem.*

<sup>45</sup> *Ibid.*, 241.

starts crying when another baby cries, or when a child brings a sad child its favourite toy for comfort. Truth-relations are relations between (the contents of) prehensions. When the sadness of one child enters into the experience of another, there is a truth-relation. Paintings, to name another example, may stand in different kinds of truth-relations to their subject. People with a very limited understanding of art may think that only a ‘realistic’ painting is true to its subject, but most people will realize that a Monet may have an equally strong or stronger truth-relation to the depicted landscape.

From the above it is important to keep in mind that truth-relations are attainable, that they vary in kind, and that they are variable in strength. Truth is not an all-or-nothing matter.

### **i.2.3. Structures of consciousness and modes of communication**

Reality is not an object for us, subjects, but to think of reality in that way is a habit of thought that comes naturally to us. The ‘subject-object view’ expresses one possible way for consciousness (in a broad sense; not just cognitive consciousness) to relate to the world. But there is another way. Eric Voegelin, who attended some of Whitehead’s lectures shortly before Whitehead’s publication of *Science and the Modern World* (1926), distinguishes between two ‘structures of consciousness’, two ways in which consciousness may relate to the world (i.e. the process of reality): intentionality and luminosity.<sup>46</sup> From the perspective of a human being a ‘structure of consciousness’ is a way of being aware of the world; the other way around – from the opposite perspective – it is a way in which the world makes itself known.

Consciousness is always consciousness of something, and that something Voegelin calls reality. “And this relation between consciousness and reality to which it refers, that I shall call, following Husserl’s terminology, *intentionality* of consciousness. So in relation to a consciousness of man, the concrete human being, reality moves into [the] position of an object, intended subjectively from the cognitive subject.”<sup>47</sup> This is one structure of consciousness; “[h]owever, consciousness is not simply intentional. It is also, at the same time, an ‘event’ in reality, an event more correctly in the ‘process’ of reality. (...) [R]eality, the object of intentional consciousness, is now becoming the subject, of which consciousness, as one of its events, has to be predicated. So, reality as a subject: Can we say that reality is conscious? or that reality knows? or is the subject of knowledge? I don’t think so. We need a different term. I am using the term that is most closely related to the similar treatment of such problems by medieval thinkers; I’m using the term *luminosity*. Reality becomes luminous in

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<sup>46</sup> Voegelin (2004b), especially 353-357. See also Voegelin (1990), 206-209, and Voegelin (2000), 28-31.

<sup>47</sup> *Ibid.*, 354.

consciousness, and consciousness then intends the reality for which the reality has become luminous in consciousness.”<sup>48</sup> Voegelin then introduces the role of language: “[A]bout all these things we would not know anything unless there were this consciousness [with] the peculiar gift of expressing itself in language.”<sup>49</sup>

On the linguistic level, the ‘double problem’ that we saw in the case of consciousness repeats itself. “All language ‘breaks forth’ in the process of consciousness, in the sense of consciousness being a luminosity in reality.” Reality becoming luminous means that it lets “that man who has consciousness find language-terms to designate what he experiences. That is the breaking forth of language.”<sup>50</sup> But when language ‘breaks forth’, it comes to signify, “in its intentionality function”, the intended reality. “Both breaking forth and intentionality, signifying reality as an object, belong to language.”<sup>51</sup> This realization brings Voegelin to “a peculiar problem of truth”: “‘Truth’ is, first of all, reality becoming luminous for its structure.” This is truth in the Greek sense of *aletheia*. But secondly, “this reality that becomes luminous is – insofar as it becomes luminous in the consciousness of man in the relation of intentionality – a ‘knowledge’ of that reality.” This constitutes the possibility of a second kind of truth, the truth of propositions in Whitehead’s thought.

Voegelin then goes on to say that, for the reason that in language and truth we find the same double structure as in consciousness, “language is practically only possible in the plural”.<sup>52</sup> Instead of pointing towards a language of intentionality and one of luminosity, however, (which is what one would expect), he identifies twelve languages, all of which express both the states of intentionality and luminosity, and emphasizing that “there are many more” such languages.<sup>53</sup> But thereby he removes the inevitable plurality of languages from what he said to be its reason. So this is where I part company with Voegelin. I would say that there is a language of intentionality and a language of luminosity, corresponding to the two structures of consciousness Voegelin points out.<sup>54</sup> The meaning conveyed through the former is constituted by what Polanyi would call a relation of indication; the meaning conveyed by the latter comes about through a relation of symbolization. Symbols are the natural extension of the process

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<sup>48</sup> Ibid., 355-356. We could rephrase this in a way that connects it to one of Whitehead’s remarks and say that “the subject emerges from the world, which it then intends as its object”.

<sup>49</sup> Ibid., 356.

<sup>50</sup> Ibid., 356-357.

<sup>51</sup> Ibid., 357.

<sup>52</sup> Idem.

<sup>53</sup> Ibid., 361.

<sup>54</sup> By these two languages, to be sure, I do not mean two separate languages, but two ways of using language – they use the same vocabulary and the same grammar.

by which reality becomes luminous to itself; they are the articulation of consciousness as luminosity. The various forms of indicative language are the natural accompaniment of consciousness in its function of intentionality.<sup>55</sup> The difference between the two may be elucidated by means of a metaphor: while symbols, engendered by the experiences of a subject that, in Whitehead's words, 'emerges from the world', are illuminated from within, concepts (and other forms of indicative language) are the flashlights used by a subject to light up particular objects in the external world. Symbols glow for as long as they are nourished; concepts cast light upon objects, either until the batteries run out or until they are pointed at some other object. Concepts, while illuminating one side of an object, cast shadows. Hence the tendency of concepts to absolutize one aspect of a phenomenon at the cost of others.<sup>56</sup>

It must be clear that I do not mean to say that there are simply two kinds of consciousness, each of which is accompanied by its own language. This picture of the situation is far too clean.<sup>57</sup> Just as the symbol and the sign represent two poles, two extremes of a spectrum, these structures of consciousness are two ideal-typical forms abstracted from a complex reality. Symbolic and indicative language intermingle in various ways. Symbols rest on concepts and new indicative meanings can become the basis for new symbolizations; concepts acquire and retain power through their connection with symbols. The relation between luminosity and symbols is also not always straightforward; it is much more complex, for instance, in the case of people who consciously utilize symbols, in full awareness of their nature as symbols. Yet however complex all these relations may be, with regard to conscience I would still emphasize the primacy of symbols. Symbolism is the natural means of expression for 'fresh' experience, for everything that is new and unknown. It is even more for what is *unknowable* intentionally, as an object over against us. While the two structures of consciousness and its two corresponding modes of expression and communication may always be present simultaneously, it seems to me that there are gradations in

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<sup>55</sup> See Voegelin (1984), 50: "To the intentionality-component of consciousness there corresponds the idea which results from the concept of the concept. One formulates concepts of a reality; while the concept is thus determined by the intentionality, as regards the relation of consciousness back to its luminosity, I would like to speak of symbols." In this text, Voegelin introduces a third element of the complex of consciousness: 'reflective distance'; I will not discuss this here, but return to it in chapter 8. See also Voegelin (2000), 32, 52, and 98.

<sup>56</sup> Hence also the association of conceptual thought with clarity (due to the sharp outlines lit up by the flashlight), and that of symbols with vagueness (which accompanies their glow).

<sup>57</sup> For Voegelin, to separate the different elements of what he calls the 'meditative complex' would mean to attempt to resolve the fundamental tension in man as a creature of the 'metaxy'. See Voegelin (2004b), 361-364.

dominance of the one over the other. Intentionality is usually dominant, which is why luminosity often goes unrecognized. But for some areas of reality, luminosity is the appropriate way of relating to them. In such cases indicative language is derived, is secondary. Conscience is such a case. As an experiential phenomenon, it is something of which we can become aware, but not primarily as an object over against ourselves. To 'know' conscience, we need luminosity, and we need symbols.

I would also say – but perhaps Voegelin would disagree – that luminosity is more basic than intentionality; that intentional consciousness is only possible because there is consciousness in the form of luminosity. If there were no consciousness in the sense of a resonance of reality in an individual's experience, a consciousness in which reality reveals itself, there could be no consciousness *of* reality as an object for a subject.<sup>58</sup>

#### **i.2.4. Language**

It is quite common today for philosophers to see language as that which, more than anything else, sets the limits for our thought and experience. What we cannot say, we cannot think. What we cannot express, we cannot experience. I submit that in its absolute form this idea is wrong. At any rate it is one-sided. Language is for a large part a *tool*, a means of expressing oneself – something that facilitates thought and expression. I realize, of course, that language is not a neutral and transparent vehicle for thoughts that are otherwise independent from it. But there is something beyond language. When I yell because I hit my thumb instead of the nail, the yell does not *constitute* the pain. Rather, it *expresses* it. What is 'important' in experience naturally pushes towards its expression.<sup>59</sup> A yell of pain is in that sense continuous with the pain. The situation is more complicated when it comes to words, but the structure is basically similar. Reality extends into us, and what is important in us seeks expression through words and other means.

In a sense we use words in an attempt to say what can never be said. A cry of pain is, generally speaking, a much more adequate expression of someone's feelings and their intensity than words could ever be; but it is otherwise not very informative. It does not by itself tell us anything about the location of the pain, nor of its cause. To communicate such details we need words, but when we use them, we distance ourselves from the concrete feelings and from the concrete situation, and abstract from it just that bit of

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<sup>58</sup> But it may be that my interpretation of 'luminosity' differs from Voegelin's. He associates it with 'revelation', in a very exalted sense, which I would not think necessary. Evidence that Voegelin is on the same track as I am, however, is the following statement: "While working on the chapter on Schelling, it dawned on me that the conception of a history of ideas was an ideological deformation of reality. There were no ideas unless there were symbols of immediate *experiences*." (Voegelin [1989], 63. Cf. Henkel (1998), 26.)

<sup>59</sup> See 8.6 for the Whiteheadian notion of 'importance'.



information which we really need someone to have – that we are really in pain. What we have abstracted from is lost in the communication, though it can be partly restored by the contextual clues the other person also receives, or by an effort of the imagination on the part of the receiver. In a sense, then, the less we say (the less we lose ourselves in verbal descriptions), the more we express; and the more we say, the less. The more words we have at our disposal, the more we can say; but at the same time, for each word we use, we lose a bit of concreteness, importance, and intensity of feeling.

Given this inverse relation between expression and the use of verbal communication, it seems that there is a direct relation between verbal language and the intentional consciousness. Symbolic language, however, counteracts this general tendency. Not all symbolism is verbal, but verbal symbolism combines the potential for nuance of verbal language with the expressive power ordinary language lacks. Thus, symbolic language attempts to continue a line of importance that extends from the world to the subject; the attempt is to extend it through the subject to other subjects, so as to allow them to participate in the same experiential ‘pattern’.

Language requires imagination; hence, it is never simply or fully transparent to experienced reality. But this does not vitiate the possibility of (un)truth. Writing about the balance between the structures of consciousness, Voegelin writes: “[T]o be aware of the truth of reality as an image emerging from a balancing process means to remain aware of the tension between the balanced image and a power of imagination which is necessary to achieve symbols of truth at all but is a neutral force inasmuch as it can also produce imbalanced and distorted images of reality. This complex of awareness I shall call the *balance of consciousness* and introduce it as the third structure to be discerned in the quest of truth.”<sup>60</sup>

There is experience *before* there is verbal language, and there is experience *beyond* any language. We are continually engaged in an imaginative struggle for words. Whitehead wrote that “language halts behind intuition”.<sup>61</sup> We might also say that language lags behind experience. At the same time, however, it provides us with a particular window onto the world. This is what is usually emphasized today. There is an element of freedom and of limitation in this fact. Language *allows* us to see the world in a certain way, but it also prevents us from seeing it in some other way – that, at least, is the danger. Symbolic language allows experience to break through the surface of ordinary language – experience that would otherwise remain submerged and out of sight.

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<sup>60</sup> Voegelin (1990e), 327. Elsewhere, Voegelin speaks of ‘reflective distance’, rather than the ‘balance of consciousness’; also, in this text he speaks of ‘mystery’, whereas later he prefers the term ‘luminosity’.

<sup>61</sup> Whitehead (1968), 49.

### I.3. THE THEORY OF SYMBOLS

Whitehead, Voegelin, Tillich, and Polanyi have all written about symbols and symbolism. I will make use of the work of three of them to explain what I mean by ‘symbols’.<sup>62</sup> Whitehead’s *Symbolism* discusses too general a notion of symbols for the present purpose.<sup>63</sup> The same holds true for one of the most famous semiotic theories, that of Charles Sanders Peirce.<sup>64</sup> I am interested in a specific notion of the symbol, and both Voegelin, Tillich, and Polanyi contribute to an understanding of that notion.

#### **i.3.1. Voegelin on the symbol of immortality**

When Voegelin speaks of immortality as a symbol, he means that the term ‘immortality’ does not refer to an object in the external world, to be seen or touched, but instead relates to a complex of meaning. Voegelin speaks of “carriers of a truth about nonexistent reality”.<sup>65</sup> ‘Nonexistence’ should be taken literally here, as *nonexistence*; the symbol does not refer to anything in the external world, but conveys truth experienced. We are concerned here with a reality within consciousness. To denote what Voegelin calls ‘nonexistence’, we might also speak of *insistence*, to point out the ‘locus’ of the reality concerned, and to express the fact that *insistent* reality may sometimes be more compellingly real than *existent* reality. That a symbol does not *refer* to an external reality does not mean that there is no relation to anything outside the experiencing subject. It means that the relation between subject, object, and mediator (the symbol) is different. This will become clear when Polanyi’s theory of symbols is discussed.

To some people, it may be obvious, or at least acceptable, that ‘immortality’ is a symbol in the sense in which Voegelin speaks of symbols, while it may be less obvious that ‘conscience’ is a symbol in that sense. They may think the term ‘conscience’ simply refers to an existent reality, the same way the word ‘chair’ does. I believe, however, that while ‘chair’ refers to an object, the word ‘conscience’ does not.<sup>66</sup> It makes more sense to speak of the existence of chairs (again in the literal meaning of *existence*), than of the existence of conscience. It is my contention that ‘conscience’, like ‘immortality’, is (primarily and originally) a symbol conveying truth

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<sup>62</sup> As Paul Tillich remarks: “In spite of the manifold research about the meaning and function of symbols which is going on in contemporary philosophy, every writer who uses the term ‘symbol’ must explain his understanding of it.” (Tillich, [1957], 41.)

<sup>63</sup> Whitehead (1959).

<sup>64</sup> Peirce (1955).

<sup>65</sup> Voegelin (1990b), 52.

<sup>66</sup> I am speaking of the symbolic use of the term ‘conscience’, of course, but even where the term is (legitimately) indicatively used, it has no object of the kind referred to by the word ‘chair’.

concerning insistent reality.<sup>67</sup> The validity of this contention will have to be judged by the clarity gained (or not) in the course of this analysis.

### **i.3.2. Tillich on symbols and signs**

Paul Tillich's discussion of symbols and signs provides some further elements of the notion of symbol that will be used in this book. Tillich starts out by saying that "[s]ymbols have one characteristic in common with signs; they point beyond themselves to something else".<sup>68</sup> Though it is true, it is also somewhat unfortunately formulated. The 'pointing beyond themselves' that symbols do is very different from that which signs do. One reason for this is that signs are arbitrary; the connection with the referent is solely based on convention. For example: "A red light and the stopping of cars have essentially no relation to each other, but conventionally they are united as long as the convention lasts."<sup>69</sup> According to Tillich, "the same is true of letters and numbers and partly even words" – note that words, for Tillich, are a special case.<sup>70</sup> A characteristic of signs is that they can be replaced, whereas symbols cannot, because symbols, unlike signs, participate in the reality they signify – this is a second characteristic of symbols.<sup>71</sup> Tillich gives the example of a national flag: "[T]he flag participates in the power and dignity of the nation for which it stands. (...) An attack on the flag is felt as an attack on the majesty of the group in which it is acknowledged."<sup>72</sup> A third characteristic of symbols is that they "open up levels of reality which otherwise are closed for us", and also (which is the fourth characteristic Tillich mentions) the corresponding dimensions of our soul: "There are within us dimensions of which we cannot become aware except through symbols, as melodies and rhythms in music."<sup>73</sup> Tillich illustrates these characteristics by pointing to art: "All arts create symbols for a level of reality

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<sup>67</sup> Again, this does not preclude the possibility of a relation between experiences of conscience and the world outside the subject. The experiences are experiences of something; hence conscience (as an experiential phenomenon) relates to something outside itself. And also without 'being about' something, conscience is still something that, like (or with) the subject, emerges from the world. Nevertheless, conscience itself is not an existent.

<sup>68</sup> Tillich (1957), 41.

<sup>69</sup> *Idem*. It could perhaps be argued that there is an end to arbitrariness even in this case, given the function that the colour red often has in nature – that of a warning. It could be argued, then, that there is a reason (other than convention) why red, not blue or green, is the colour to indicate that people have to stop. Nevertheless, the final determinant of meaning is convention.

<sup>70</sup> *Idem*.

<sup>71</sup> Recall Whitehead's description of truth-relations; a symbol has a peculiar (strong) kind of truth-relation to what it symbolizes.

<sup>72</sup> *Ibid.*, 42.

<sup>73</sup> *Ibid.*, 42-43.

which cannot be reached in any other way.”<sup>74</sup> To deny this is to say either that these symbols have no meaning beyond themselves, or that any poem can be replaced by a piece of prose, without loss of meaning. As a fifth characteristic, Tillich states that “symbols cannot be produced intentionally”. Instead, “[t]hey grow out of the individual or collective unconscious and cannot function without being accepted by the unconscious dimension of our being. Symbols which have an especially social function, as political and religious symbols, are created or at least accepted by the collective unconscious of the group in which they appear.” This social dimension of symbols is very important in the present context.<sup>75</sup> The symbol of conscience has been, and to a certain extent still is, both a religious, a moral, and a political symbol. The extent to which it is a *shared* symbol determines its social power. If the legitimacy of the legal category of conscientious objections is doubted today, that is partly because the symbol of conscience is by many not recognized as such, let alone widely shared as a symbol. The social dimension of symbols also makes them amenable for manipulative usage. Albert Salomon writes: “Symbols can be activated as images in a frame of reference in order to divert discipline, and control human souls.”<sup>76</sup> We will see examples of this in part II. So symbols cannot simply be produced, but they grow, and when the situation changes, they may lose their evocative power and die. This is the last characteristic of symbols mentioned by Tillich.<sup>77</sup> It is of particular importance in connection with the phenomenon of loss of meaning, which will be the subject of section i.3.4.

(Non)arbitrariness, or the opposition of intentional production versus organic growth, is central to Tillich’s understanding of the difference between signs and symbols. Now, given that the production of a language is for the most part not an ahistorical matter, but rather a process of articulation in which more or less stable expressions arise, enter into relationships, become more solid or lose their stability again and change their meaning, it may seem hard to speak of arbitrariness at all. Yet there is a difference between signs and symbols. In the case of linguistic signs and symbols, the former may turn into the latter, and when that happens, they come to signify far more. The word ‘head’ may be used simply to signify the top part of the body, containing the brain, etcetera; but when it is used symbolically, the meaning of ‘head’ stretches far beyond that of the external reality. For the first use, it does not matter much whether we use the term ‘head’, or decide to give it another name; for the symbolic use, it matters a lot. The meaning of the symbol *rests* on the ordinary meaning of the term, but goes far beyond that. The symbol of conscience articulates a certain

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<sup>74</sup> Ibid., 42.

<sup>75</sup> See i.3.5 on the social nature of symbols.

<sup>76</sup> Salomon (1963), 254.

<sup>77</sup> Tillich (1957), 43.

complex of experiences, using the combination of the elements ‘con’ and ‘science’ (con-scientia in Latin, syn-eidesis in Greek) to evoke a meaning that rests on the ordinary meaning of the elements, but points beyond them to insistent reality – in Tillich’s words: to the depth dimension of our being.<sup>78</sup>

### i.3.3. Polanyi on signs, symbols, and metaphors

Finally, I will present Michael Polanyi’s theory of symbols, which is of central importance for our understanding of conscience as a symbol, and of the practice of conscientious objection. Polanyi offers an insightful and elegant explanation of the nature of signs, symbols and metaphors, to which I will refer throughout this book.<sup>79</sup> According to Polanyi, *signs* have meaning because they *indicate* something else. Polanyi explains this in terms of *subsidiary awareness* (and subsidiaries) and *focal awareness* (and focal attention, focal target). The subsidiaries *bear on* a focal target, for instance when someone points with his hand to a certain interesting object – my awareness of the person, in particular of his outstretched arm and hand, is a subsidiary awareness, that immediately leads my attention to the object, the focal target.<sup>80</sup> Polanyi says that one *integrates* the subsidiaries to the focal target. This reveals what he calls the *from-to structure* of knowing. The important thing here is that the sign, the subsidiary, has no intrinsic interest; its interest lies in its meaning, in its function of pointing to something that *is* intrinsically interesting. The relation of indication can be formulated thus:

S → F, where S means ‘subsidiaries’ and F means ‘focal target’. Including ‘-i’ for ‘no intrinsic interest’ and ‘+i’ for ‘intrinsically interesting’, we get:

S<sup>-i</sup> → F<sup>+i</sup>.

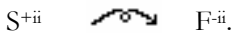
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<sup>78</sup> As I said before, (and as we will see further on), the symbol of conscience does not depend for its existence on the use of the word ‘conscience’; but the meaning of any linguistic symbol rests on the ordinary meaning of the sign(s) of which it is (linguistically) made up.

<sup>79</sup> This explanation can be found in: Polanyi and Prosch (1975), chapter 4: “From Perception to Metaphor”.

<sup>80</sup> The same goes for words, in many cases. Polanyi points out that words can sometimes be replaced by roadsigns, maps, or mathematical formulas. When words are used in this way, they are of little interest themselves – the interest lies in their meaning.

Now, symbols are not just signs.<sup>81</sup> There are still subsidiaries and a focal target involved, but the relation between them is not one of indication. Instead, it is a relation of *symbolization*. A symbol bears on something else, but in a completely different way from a sign. Instead of indicating something else, it *stands for* something else – a phrase Tillich also used. This entails, in a sense, a reversal of the scheme we saw in the case of indication. Not in the sense that the positions of the S and F change; the change lies in what they denote. Whereas signs are subsidiaries, symbols take the place of the focal target. So the structure is not one *from* a symbol *to* something else, but the other way around: *from* something else *to* a symbol. The symbol itself is the focal target, though it is *not* intrinsically interesting. A flag is basically just a piece of cloth; a menhir simply a large standing stone. In the case of symbolization, it is the subsidiaries that are intrinsically interesting. With a symbol like the flag of our nation, the subsidiaries are provided by ourselves, our lives, our memories, insofar as they are related to the nation: “What bears upon the flag, as a word bears upon its meaning, is the integration of our whole existence as lived in our country.”<sup>82</sup> Polanyi continues: “But this means that the meaning of the flag (the object of our focal attention) is what it is because we have put our whole existence into it. We have surrendered ourselves into that ‘piece of cloth’ (...). It is only by virtue of our surrender to it that this piece of cloth *becomes* a flag and therefore becomes a symbol of our country.”<sup>83</sup> In a formula like the one above, the relation of symbolization would look like this:



The looping in the arrow expresses that, while the subsidiaries bear on the focal target, this also reflects back on them; that is, we *surrender* ourselves to the symbol, and at the same time it *carries us away*.<sup>84</sup> This is what gives symbols their great potential power, socially and politically.

We have seen that the relations of indication and symbolization “are inverse with respect to the location of intrinsic interest”. Related to this is what Polanyi claims to be the “essential difference between indication and

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<sup>81</sup> I am sketching ideal types here, the extremes of a spectrum. As I explained in the introduction, I do not wish to say that some things or words are just signs, and others just symbols. A word may be more or less symbolic in nature, and may be used symbolically in one context and indicatively in another. All words are somewhere in between the extremes of the spectrum, some closer to the one side, some closer to the other.

<sup>82</sup> This process of symbolic integration will be discussed in the context of conscientious objection in chapter 15.

<sup>83</sup> Polanyi and Prosch (1975), 72-73.

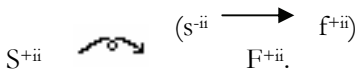
<sup>84</sup> Cf. Loemker (1962), 122, where he speaks of “an element of magic inherent in the symbol and its power” and a “total surrender of the person (...) to the symbol”.



“Not all the waters of the rough rude sea  
Can wash the balm from off an anointed king.”

The meaning of the metaphor is that an anointed king cannot be deprived of his office, but that is not what it literally says. It is a meaning that the reader has to bring to bear upon the sentence, to make it effective as a metaphor. This is the subsidiary meaning, and it has intrinsic interest. Shakespeare’s lines themselves, however, are intrinsically interesting as well: “[T]he verbal projection of the seas trying in vain to wash the balm from a king, though fanciful, is far from meaningless. In fact it presents a tremendous spectacle to our imagination.”<sup>89</sup> So we have an intrinsically interesting tenor, bearing on (to be schematized with a looped arrow) an intrinsically interesting vehicle. If we now include the relation to ourselves, bringing to bear upon the metaphor as a whole “all those inchoate experiences that are related to the two parts of the metaphor”, [t]he result is that a metaphor, like a symbol, carries us away, embodies us in itself, and moves us deeply as we surrender ourselves to it.”<sup>90</sup>

I have spoken of conscience as a symbol. Can I still do so, in light of the above? As I said, Polanyi’s examples of symbols are all ‘inarticulate things’. Is the word ‘conscience’ a metaphor, rather than a (normal) symbol? I think it is something in between.<sup>91</sup> The relation between tenor and vehicle is different, or rather, the terms do not apply. I said earlier that the meaning of the symbol of conscience rests on the ordinary meaning of the elements ‘con’ and ‘science’. These elements indicate certain meanings, rather than that they are a vehicle for them. So instead of the relation between tenor and vehicle from the above diagram, we have an indicative relation between a subsidiary and a focal target. This integration occurs *within* the focal target of a symbolic relation, thus:



I have pictured the F (the word ‘conscience’) here as having intrinsic interest, because not all meaning comes from the side of the S in this case. But given that the intrinsic interest of F is based on a relation of indication, not on a symbolic (or metaphoric) relation, its intrinsic interest is not as great as in the case of a (true) metaphor.

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<sup>89</sup> Idem.

<sup>90</sup> Ibid., 79.

<sup>91</sup> It should also be noted that the symbol of conscience as I understand it could never be a metaphor of the kind Polanyi uses to illustrate the nature of metaphors, for the reason that, as Tillich said, symbols cannot be invented. In so far as ‘conscience’ would be a metaphor, it would have the structure Polanyi delineates, but with the qualification that it was not simply invented, but had grown.



In whatever way the details would have to be filled in, however, the ‘essential difference’ Polanyi draws attention to, in my view, is that between a relation of indication and one of symbolization, and this difference lies “in the relation of the self to the whole process”. So the truly important thing is not what *kind* of symbol ‘conscience’ is, but *that* it is a (kind of) symbol. Hence, I will continue to refer to conscience as a symbol. The significance of the difference between symbols and metaphors recedes even further into the background when we take into consideration that ‘conscience’ and its predecessors ‘conscientia’ and ‘syneidesis’ do not exhaust the symbol of conscience, but are only its best-known verbal forms or articulations. In certain periods in history, each of them crystallized as the more or less stable carrier of the symbol.

#### **i.3.4. Varieties of loss of meaning**

An important element of Voegelin’s treatment of symbols, which reflects the main elements of his entire theory of symbolization, is his (somewhat gloomy) exposition of the degenerative processes that lead further and further away from the original truth of experience. This exposition is not unique. Something similar can be found in the work of Henri Bergson, for instance in his *Introduction to Metaphysics*, in the work of Alfred North Whitehead, most clearly in *Modes of Thought*, in Husserl’s work (for example in *Vom Ursprung der Geometrie*) and in that of Michael Polanyi.<sup>92</sup> Each in his own terms describes the process by which an original intuition or evidence is lost, symbols cease to be translucent and turn into doctrine and dogma, of which the remote origins are finally completely forgotten. In Voegelin’s terms: the symbols (“in the sense of a spoken or written word”) that are left are “the exterior residue of an original full truth comprising both the experience and its articulation”.<sup>93</sup> The problem is that, while at first there is an intimate connection between experience and symbol, this connection tends to “dissociate into a piece of information and its subject matter”, which means that the receiver of the ‘information’ will probably not be moved to having a similar experience to the one that engendered the symbol.<sup>94</sup> To save as much as possible of the meaning conveyed by the symbol, people will try to translate it in the form of propositions, which leads to doctrine, to dogmatic truth. The final loss of meaning occurs “when doctrinal truth becomes socially dominant”, and people will forget how doctrine was derived from symbol, and symbol engendered by experience: “the symbols (...) cease to be translucent for reality”.<sup>95</sup> All that is left are

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<sup>92</sup> Bergson (1961), 70; Whitehead (1968); Polanyi and Prosch (1975), chapters 2 and 4.

<sup>93</sup> Voegelin (1990b), 52-53.

<sup>94</sup> Idem.

<sup>95</sup> Ibid., 54.

propositions about things, as if those ‘things’ were objects of sense perception, which they are not; this invokes the sceptical reaction that destroys the dogmatic illusion, without restoring the connection to truth experienced. For Voegelin, this is a description of the development of Western thought in general. His writing tends towards a *Verfallsgeschichte*. I reject such pessimism. Instead, I take the development from symbol to doctrine to be a recurring pattern in history. While certain symbolizations lose their vitality, equivalent others come into existence, so that there is a continuity in the symbol of conscience. However, I do believe that in so far as there is a general trend in expressions of and thought about conscience in the last two millennia of European history, this is best characterized as a development from symbol to doctrine. Indicative language gained dominance, as conscience came to be looked upon more and more as an object to be located and definitively described. History is never linear, however, and there are various interwoven but relatively independent strands of thought to be looked at.

The abovementioned authors point out that symbols engendered by certain experiences tend to lose their meaning when the original experience is lost. The symbols are intended to retain the experience and to make it accessible to others, but they can never do so completely, and certainly not indefinitely. In time, the symbols solidify, and (some) meaning is lost. In terms of Voegelin’s structures of consciousness: when luminosity (in the form of some revelatory experience, whether it be religious in nature or an experience of evidence regarding a mathematical equation) makes way for intentionality, and when the latter is taken to be the whole of consciousness, the possibility of symbolic understanding is lost. Hence, symbolic meaning is lost. In his *Autobiographical Reflections* Voegelin expresses the problem in a way reminiscent of Polanyi’s distinction between symbols and signs, and anticipating an analysis of loss of meaning in Polanyi’s terms. Henkel summarizes Voegelin’s point as follows: “Voegelin gelangt bei seinen Forschungen [for Order and History] zu der Erkenntnis, daß zwischen menschlichen Ordnungserfahrungen und den diese Erfahrungen zum Ausdruck bringenden Symbolen einerseits sowie Ideen als Konstruktionen, welche die Erfahrungssymbole in Begriffe verwandeln, andererseits zu unterscheiden ist. Während die Menschen ihre Erfahrungen, d.h. die erfahrene Realität, in Form von Symbolen ausdrücken und die Symbole umgekehrt den ‘Schlüssel zum Verständnis der ausgedruckten Erfahrungen’ (AR 100) darstellen, suggerieren Ideen die Existenz einer anderen als der erfahrene Realität: ‘Aber eine andere als die erfahrene Realität existiert nicht. Deswegen besteht bei Ideen die Gefahr, daß sie die Wahrheit der Erfahrungen und ihrer Symbolisierung deformieren.’ (AR 98)”<sup>96</sup> For a

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<sup>96</sup> Henkel (1998), 29.

more precise understanding of the way loss (or distortion) of meaning may come about we must again use Polanyi as our starting-point.

*i.3.4.1. The basic types of loss of meaning for signs and symbols*

Loss of meaning does not occur in the same way with signs and symbols alike. In the case of signs, loss of meaning occurs when the sign (a subsidiary) becomes the object of focal attention. For instance, in case someone uses his index finger to indicate some object, and instead of following the direction of the finger to look at the object we keep staring at the finger, this finger has lost its meaning as a subsidiary. There is no longer a from-to structure; nothing is indicated. We have made the sign (the finger) our focal target, and treat it as if it were intrinsically interesting. (In a sense, it may be, of course, but in this case it was intended merely as a subsidiary without interest of its own.) The same thing occurs when we repeat a word several times for ourselves, in rapid succession. Mr. Bean does this with the word 'big', in one episode of the comedy series. The word loses its transparency and therefore its meaning; it becomes opaque, a mere (odd) sound. (Try 'odd' – it works very well.)

The most important way (for our purposes, at any rate) for symbols to lose their meaning is different. A symbol, unlike a sign, is already the focal point of attention. One way for a symbol to lose its meaning – one that is of great importance to us here – is exhibited *when the relation of symbolization is mistaken for one of indication*. We must take care to read this well: to mistake a relation of symbolization for one of indication does not mean that the S in the symbolic relation is taken to be the subsidiary in an indicative relation, and that the F in the symbolic relation is mistaken for the intrinsically interesting focal target in a relation of indication. What I mean when I say that a relation of symbolization is mistaken for one of indication, is that a *symbol* is thought to be (or treated as) a *sign*. As a result, someone who errs in this way, instead of surrendering himself to the symbol, or being carried away by it, looks for that which is indicated. He does not recognize the relation of the symbol to the self. Instead of keeping the symbol in focal awareness, allowing his experiences and himself to become integrated in it, he mistakes it for a sign, of which he need have only a subsidiary awareness. But we have seen that the nature of symbols is such that they can only be, as long as people surrender themselves to them; they are essentially related to the self. This is another way of expressing the insistent quality of the reality they convey. So, when we say that meaning is lost when the relation of symbolization is (mis)taken for one of indication, we might also say that people have started looking for *existent* instead of *insistent* reality. As soon as we mistake a relation of symbolization for one of indication, a symbol for a sign, we will ask what is indicated by the ex-symbol (now sign), and we will start looking for some existent entity that is the focal object pointed out to us by the subsidiary, which is the former symbol – and we will, naturally,

either find that there is nothing there, or find something that *we* are willing to accept as the ‘meaning’ of the word that was once a symbol, but is rejected by others as such. There are many ways to express this structure of loss of meaning. We might say that loss of meaning occurs when people no longer surrender themselves to the symbol, or when it no longer carries them away; we might say that the attitude changes from a self-giving one into a self-centered one – but the underlying structure, at least in practice, in the case of the symbol of conscience (as we will see), is the same: a relation of symbolization is taken for one of indication, in which process the F is mistaken for an S, and another F is sought. In the case of conscience, many have found such an F; all these things that they called conscience became competitors in the race to become the true conscience. Others (later) drew the logical conclusion: there is no true conscience, because the word does not refer to anything at all.

I should point out that there is also a variant to this scheme: loss of meaning also occurs when someone takes a symbolic notion to be indicative, that is, when he takes the notion as intended to refer to some existent; while this person, at the same time, rejects the idea of reference for some notions (including this one), or for all. Conscience could thus fall victim to a Wittgensteinian: “Wovon man nicht sprechen kann, darüber muß man schweigen.”<sup>97</sup> While in the first case, the problem is that indication (or reference) is taken seriously, in this case it is that a notion is taken as indicative, while indication (for this type of notion) is rejected as a possibility. Depending on the background of this rejection, the two types of loss of meaning may be connected or not.

#### *i.3.4.2. Other varieties of loss of meaning*

Above are the basic structures of loss of meaning for the cases of signs and symbols, at least for situations where the loss of meaning is at least partly due to (some error, activity, or neglect of) the experiencing, interpreting, or communicating subject. Obviously, signs may also lose their meaning through the disappearance of the referent. How often does it not happen that one sees something special (say, a hen herrier flying off with a freshly caught prey), which one then points out to one’s companion, and by the time you have got the guy’s attention, there is nothing left to be seen. One’s index finger is still, but now meaninglessly, hanging suspended in the air. The sign has lost its meaning, and has in a sense ceased to be a sign. A similar thing might happen with words. Leafing through an old book, you may encounter a word that you do not even recognize. The reason for that might be (though quite often it is not) that its referent no longer exists – an object (e.g. a piece of technology) that is no longer in use, of which there may even be no single specimen left. Of course, in such a case, the word still retains its meaning, in

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<sup>97</sup> Wittgenstein (1993), 85 (thesis 7). Cf. Barfield (1962), 16-17.

one sense, and the dictionary may state it, or else it could be recovered, but in another sense, it has become a meaningless sign, or even ceased to be a sign. If it occurs in a book, you will recognize that it is a word and hence a sign, but it will have no meaning for you. Had you encountered it in isolation, you might have thought it was no word at all, but just a row of letters bearing some similarity to a word. In isolation, you might not have recognized it as a sign. So a sign may lose its meaning because its referent disappears in some way.

An interesting question is what happens to a symbol like the flag of a country when the country of which it is the symbol falls apart. Flags are signs or symbols (or something in between), depending on the context. With flags, the alternation between sign and symbol function is extremely clear. To foreigners, a foreign flag is primarily a sign referring to another country; a sign of which they know it is a symbol for the people of that country. So when that country falls apart, the flag either loses its meaning as a sign, or its meaning changes, if one of the newly formed countries adopts it as its own. The flag of a country that no longer exists is like a word whose referent no longer exists, except as an idea left over from the past. In some sense, then, the sign still has meaning, as a sign referring to a former country. (So people will say: "Hey, that was the flag of...") As a symbol, it need not lose its meaning when the country falls apart; it may remain as a symbol of the unity of that nation. On the other hand, when the new situation proves stable and lasting, it is likely that the symbol will eventually die.

Symbols may lose their meaning in other ways than those described so far. A symbol may lose its meaning because it (the focal target) is itself seen as intrinsically interesting, instead of the subsidiaries. The structure is then similar to what we described as the basic form of loss of meaning in the case of signs. Loss of meaning occurs because what has no intrinsic interest (in the context of the intended integration of meaning) is treated as intrinsically interesting. In the case of signs, this means that no referent is sought. With symbols, it means that the person confronted with the symbol 'forgets' to surrender himself to the symbol, to let himself be carried away by it; in other words, he forgets that he needs to integrate his experiences and thereby himself in the symbol. It is the experiences that are intrinsically interesting, and that endow the symbol with meaning. Without them, the symbol is an empty shell. To view the symbol itself as intrinsically interesting could mean to look at a flag as a wonderful (or ugly, but still interesting) composition of colours and (perhaps) figures. In the case of the term 'conscience' (or equivalents), this is a lurking danger in virtue of the fact that the F in the diagram does have *some* intrinsic interest. On the other hand, once the contribution of the self is forgotten, it is more likely that only the relation of indication on which the symbol rests is seen, and that the symbol itself is then mistaken for a sign. Where an imaginative symbol (with the form of a metaphor) like the worm of conscience is involved, the chance that

the contribution of the self is forgotten is greater. The idea of a ‘worm of conscience’ “presents a tremendous spectacle to our imagination”, to use Polanyi’s words. In recent times, with regard to conscience, the contribution of the self is not forgotten, but overstressed in a sense. Conscience is almost exclusively interpreted in terms of the self and its integrity. This is not surprising, when one realizes that on the side of the focal target we have not only the symbol, but also the integrated self. But it is the contents of the experiences that are intrinsically interesting; in terms of intentionality: this is what conscience is about – it is not about the self, nor about integrity.<sup>98</sup>

At the same time, a symbol itself is ‘critical’ of any definite contents. It is a symbol, exactly because there is no exact and definite way to convey the meaning inherent in it. It would be a mistake for anyone to identify his or her personal experiences at one point with the exact meaning of the symbol. But the realization that no single experience or combination of experiences defines the symbol, and that no symbolization is ultimate, may also lead to loss of meaning. The religious critique of religion, which is what we are concerned with here, which maintains that nothing is ultimate but God, that ‘only God is God’, is what Tillich calls the ‘Protestant principle’.<sup>99</sup> Hammond notes: “Tillich holds that the greatness of Calvinist Protestantism – its creative principle – lies in its cultivation of the interior ethical and spiritual life of the individual. By implication this means its cultivation of conscience. But this is also its tragedy. By criticizing all objective embodiments of the holy and depending upon the subjective conscience, the Calvinist character tends towards secularization and the loss of meaning. The tendency toward ‘a self-enclosed and self-sufficient autonomous culture’ has its correlate in a personality that is cut off from all meaningful contents. Through criticism of sanctified meaning one becomes ‘cut off from one’s own psychic depths and from the supportive powers of the community’.”<sup>100</sup> The problem, then, is to maintain the proper balance between the enthusiastic employment of symbols and the criticism of symbols.

Finally, symbols may lose their meaning through inflation. As with a word that is repeated in swift repetition, any word that is used too often, whether it be a sign or a symbol, can become opaque. With symbols, this might happen due to misuse. Symbols can be powerful things, and people may be tempted to use that power for their own purposes. But a symbol that is used too often becomes too familiar to evoke the response it was meant to evoke; people will no longer surrender themselves to it – it will no longer carry them away. Misuse of a symbol may cause a strong connection between a relatively well-defined class of experiences and a symbol to give way to a

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<sup>98</sup> This is more elaborately explained in chapter 15.

<sup>99</sup> Hammond (1993), 52-53. See Tillich (1957), 29.

<sup>100</sup> Hammond (1993), 53. He quotes from Paul Tillich, *Political Expectation*, Harper and Row, New York, 1971.

much looser connection between a much more vaguely delineated ‘class’ of experiences and that symbol. But the symbol depends for its power on the recognizability of the type of experiences that have engendered it in the first place, and which it has since expressed. Misuse of a symbol, then, may render its meaning (if we can still call it that) idiosyncratic, that is: unrecognizable to others.

### **i.3.5. The social nature of symbols**

What the conclusion of the previous section in fact comes down to is that symbols are social in nature; that is, they cannot exist outside a language community. That does not mean there can be no private symbols. Some trinket one has inherited from one’s grandparents may have become a private symbol for one’s childhood, which integrates many childhood experiences and memories – and probably many later experiences as well, but that is another matter. But the symbol of conscience is a social symbol, a social construct. It is a symbol shared by people socially and historically. Its effectiveness depends on the degree to which it is shared (i.e. the number of people who share it) on the one hand, and on the intensity of their reaction to it on the other. But even when a symbol loses its effectiveness altogether, its social nature prevents it from becoming entirely devoid of meaning. It has a social, (or cultural, if one prefers that term), existence. That means that its field of application is to a certain extent predetermined for any possible new user. The term, whether as a symbol or not, cannot be applied to just anything; not just any experience can be meaningfully integrated in the symbol. There is a certain range of experiences that it may accommodate, and there is a certain range of meanings which can be constituted through it by a relation of indication. All this is due to the social aspect of symbols.

Then what does it mean that experiences *engender* symbols? How do symbols arise? In a discussion session with Eric Voegelin, someone asked him for a definition of ‘symbol’. In his answer, Voegelin said: “[A]ll important language symbols (...) arise on occasion of certain experiences of concrete persons at a given time.” He did not give a definition, but stated that “[s]ymbolisms pertaining to nonexistent reality and the existential tensions are called symbols because we have no other word, because it has become conventional”.<sup>101</sup> So, instead of giving a definition, Voegelin entered into the problematic of the genesis of symbols, which is what I am interested in here. Another participant in the discussion then asked about the constancy and variability of experiences and language symbols, respectively. Voegelin then replied that “experience isn’t so constant either. Now we get into the problem of history. It is one of those mysteries of history that such experiences [transcendental experiences] are not given to everybody at the beginning of known history but appear all of a sudden – say, in the thirteenth

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<sup>101</sup> Voegelin (2004a), 262.

century before Christ in the case of Moses, in the seventh century before Christ in the case of Jeremiah, in the case of Heraclitus around 500 B.C., in the case of Buddha about 500 B.C., and so on. So experience is not a constant. But you get a complex of experience, you might say, which historically differentiates and shows its structure. There is a historical development of experience – differentiating it, making its structure clearer – and on every occasion developing language for the new discovery. This is one of the most important sources of new language.” So, while it is often extremely hard to trace the origin or explain the genesis of new experiences, we can say that it is those experiences that call for expression; in so far as the experiences are new, the existing language cannot accommodate them.<sup>102</sup> Hence it will have to be stretched and supplemented. This may occasionally be the work of individuals, but new experiences tend to arise in communities, not single individuals, and therefore the search for new language is a social enterprise.

An individual with extraordinary experiences – extraordinary in the sense that they are atypical, even unknown, in the individual’s social environment – will have to find new language by him- or herself. Plato’s Socrates, whom we will attend to in 1.8, is an example of such an individual. The most likely avenue for such a person to take is to look for existing words and apply them symbolically to the matter at hand; this may or may not be a conscious use of metaphor. Its effectiveness; that is, whether it will become a symbol – more than a private symbol at any rate – depends on the way others react to it. It is important to note that in such cases, *how* someone experiences what he or she experiences depends to a certain extent on the available language. The more someone presses experiences to become articulate, the more they will have to adapt to the language that is at hand.

These are just a few remarks on a topic that could fill (and has filled) books. At present, they will have to do. In the course of his book there will be plenty of occasions where the social aspect of symbols comes to the fore.

#### 1.4. METHOD

The word ‘method’ may suggest a rigidity of procedure that does not apply to the way I go about things in this book (nor to the way I went about producing it). Nevertheless, I have gone about things in a particular way in my research, and this does show in the book that is the result of it, so if we

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<sup>102</sup> Cf. Koselleck (1989), 652: “[T]here will (...) occur events (...) which are beyond the pale of language, and to which all words, all sentences, all speech can only react. There are events for which words fail us (...).” Koselleck’s perspective is narrower than mine, however; he is thinking of catastrophic events on a massive scale, and perhaps of other ‘huge’ events as well.



do not take ‘method’ in too narrow a sense, I may be justified in saying a few words about my ‘method’ here.

At the beginning, and in a sense at the heart, of the book is an analysis of the symbol of conscience. On the basis of a pre-understanding of conscience, certain expressions in two historical examples are singled out as symbolic expressions of conscience. I will distinguish between three core elements of the symbol of conscience. All expressions of conscience (in whatever period) can be interpreted and analyzed in terms of the (core elements of the) symbol of conscience. But when I engage in analysis, I face the problems of language mentioned in i.2.4. I inevitably lose something with respect to the symbols that are the object of analysis. It is worth looking at some of the problems of analysis, and possible ways of addressing them.

#### **i.4.1. Analysis**

In his *Introduction to Metaphysics*, Bergson draws attention to some problems attaching to analysis. I will briefly explain his views on the subject. Bergson begins by saying that there are two ways of knowing a thing. “The first implies going all around it, the second entering into it.”<sup>103</sup> Whereas the first depends on viewpoints and the use of symbols, the second depends on neither. The first ‘stops at the relative’; the second, where possible, ‘attains the absolute’.<sup>104</sup> The only way of attaining the absolute is through the kind of sympathy Bergson calls *intuition*. To the other manner of knowing things, the name *analysis* is attached.

So analysis proceeds by ‘going around’ an object, perceiving it from different viewpoints, so as to describe different *aspects* of the object. These will be expressed in *concepts*, in abstract ideas, which means that the essence of the object will never be known. “Analysis (...) reduces the object to elements already known, that is, common to that object and to others. Analysing then consists in expressing a thing in terms of what is not it.”<sup>105</sup> Bergson illustrates this by showing how analysis will always divide reality up into immobile slices, easily studied, but never catching the life and mobility of reality in motion, in lived time, in *duration*. Analysis is like taking picture after picture of an object, but never being able to reassemble these to make up the real thing. Even if we would be able to put everything there is to an object in concepts (which is impossible), it is still the case that, if we try to put these concepts together, ‘the junction will be brought about in a different way, depending on the concept we start from’.<sup>106</sup> Whitehead expresses a similar thing, when he says that the ‘mode of togetherness’ of elements in a proposition is different from that of elements in the actual occasions (events)

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<sup>103</sup> Bergson (1961), 1.

<sup>104</sup> *Ibid.*, 1-2.

<sup>105</sup> *Ibid.*, 6-7.

<sup>106</sup> *Ibid.*, 18-19.

that make up reality.<sup>107</sup> As a proposition and a nexus (a chain of actual occasions) 'belong to different categories of being', 'their identification is mere nonsense'.<sup>108</sup>

This is why Whitehead often states that the problem for philosophy is language, though at the same time it is philosophy's instrument. In *Modes of Thought* he states it thus: "The great difficulty of philosophy is the failure of language."<sup>109</sup> Language fails, because man, living in shifting circumstances, has to express what is new in terms of what is old, the unknown in terms of what is known. Which is why, for example, "in the origin of civilized religion, gods are like dictators". Succinctly but adequately, and in terms that bring us back to Bergson, Whitehead states: "Language halts behind intuition."<sup>110</sup> In intuition, we comprehend what is self-evident, what needs no proof. The problem is not in the comprehension, but in the expression of what is self-evident. We might also say that the problem lies in the symbolization of experience. This is the problem I am concerned with here, but it is also the problem I have to face myself, in writing an analysis of a symbol.

Is there a way out of this situation? As Bergson says: "it is impossible to travel back to an intuition one has not had", so this is not what I should aim for.<sup>111</sup> The analysis is not meant to evoke the experiences that engendered the analysed symbols. But I am also not satisfied with the kind of analysis Bergson describes, the kind that immobilizes and solidifies reality – the kind that falls prey to the *fallacy of misplaced concreteness*, as Whitehead famously called it. If I want to avoid this fallacy; that is, if I want to avoid that the terms I use in describing elements of the complex of meaning expressed in the symbol of conscience will be taken for the 'thing' (conscience) itself, I will have to use concepts that are less susceptible to this problem. Bergson, though he defined metaphysics as 'the science which claims to dispense with symbols', knew also that metaphysics could not do without them, but had to make use of concepts.<sup>112</sup> So, it had to free itself 'of the inflexible and ready-made concepts' and replace them by newly created 'flexible, mobile, almost fluid representations, always ready to mould themselves on the fleeting forms of intuition'.<sup>113</sup>

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<sup>107</sup> Whitehead (1964), 243.

<sup>108</sup> *Ibid.*, 244.

<sup>109</sup> Whitehead (1968), 49.

<sup>110</sup> *Idem.* Compare Voegelin (1990a), 126: "Analytically, one cannot go beyond propositions of this kind." ("This kind"; for example: "There is psyche deeper than consciousness, and there is reality deeper than reality experienced, but there is no consciousness deeper than consciousness.")

<sup>111</sup> Bergson (1961), 26.

<sup>112</sup> *Ibid.*, 8.

<sup>113</sup> *Ibid.*, 20.

Voegelin is aware of this; he begins his essay “Equivalences of Experience and Symbolization in History” with the remark that ‘the search for the constants of human order in society and history is, at present, uncertain of its language’.<sup>114</sup> The language he finds is that of ‘equivalences of experience’ and ‘equivalences of symbolization’. Voegelin asserts that the ‘language of permanent values’ belongs to a past era in the methodology of this field. His use of the language of equivalences removes the focus of attention from the symbols used by man to the engendering experiences. In different cultures, different symbols are used; we can speak of equivalent myths and rites, because of the sameness of the engendering experiences.<sup>115</sup> But Voegelin realizes that the danger of committing the fallacy of misplaced concreteness is not yet past; the misplaced concreteness could now be attached to the experiences: “the experience is in danger of becoming the resting point in our search for constants in history”.<sup>116</sup> This is not acceptable, as the experience always has to be articulated to be identified, returning us to the level of symbols, which cannot escape historical relativity. No symbol can claim to be the absolute representation of the experience that engendered it. Every symbol is at best ‘one more historically equivalent truth’.<sup>117</sup>

As experiences are not the resting point of Voegelin’s analysis, what is? The answer is that there is no *resting* point. We must speak of equivalent experiences that originate in the *depth* of the soul. The symbol of depth was articulated, among others, by Plato – and we have seen that Tillich makes use of it as well. This depth cannot be called a resting point, as the existential tension of man, at which the symbol of depth points, is not resolved. Man exists in the *metaxy*, the In-Between of the timeless and time.<sup>118</sup> This existence is an existence in process, and “by the symbols ‘consciousness’, ‘experience’, and ‘symbolization’” we “denote the area where the process of reality becomes luminous to itself”.<sup>119</sup> The tension of the process is never resolved, as the articulation of truth will never produce more than an equivalent truth – and Voegelin recognizes that the search that renders such truth rests ultimately on faith.<sup>120</sup>

It is clear from the above that Voegelin’s own analysis (and mine, therefore, too) participates in the process it tries to articulate. So in a sense

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<sup>114</sup> Voegelin (1990a), 115.

<sup>115</sup> Idem.

<sup>116</sup> Ibid., 123.

<sup>117</sup> Idem.

<sup>118</sup> Reinhold Niebuhr spoke of the “amphibious situation of man, being partly immersed in the time process and partly transcending it” (Niebuhr [1946], 143).

<sup>119</sup> Voegelin (1990a), 120.

<sup>120</sup> Ibid., 133. Moreover, ‘philosophy (...) is not a substitute for revelation. For the philosopher is a man in search of truth; he is not God revealing truth’ (Voegelin [1990b], 79).

we are dealing with an act of self-reflection. The question naturally arises: how do we ascertain the validity of propositions like ‘man participates in the process of reality’, formulated by Voegelin? He answers that the test, the ‘validating question’ will have to be: “Do we have to ignore and eclipse a major part of the historical field in order to maintain the truth of the propositions (...); or are the propositions recognizably equivalent with the symbols created by our predecessors in the search of truth about human existence? The test of truth (...) will be the lack of originality in the propositions.”<sup>121</sup> Now, “tautology is the intellectual amusement of the Infinite”, as Whitehead says, but this is nevertheless what we have to aim for.<sup>122</sup> In other (still Whitehead’s) words, our abstractions – because that is what our ‘almost fluid representations’ still are – have to be ‘well founded’. An abstraction, according to Whitehead, “is nothing else than the omission of part of the truth”. It is well founded “when the conclusions drawn from it are not vitiated by the omitted truth”.<sup>123</sup> So the analysis must try not to add, nor to forget, but aim for equivalence, on a more differentiated level, with the symbols found in history – or perhaps I should say: the symbols that make up the trail we call history.<sup>124</sup>

#### **i.4.2. Levels of analysis**

A philosophical analysis of conscience cannot be conducted on one level alone, but has to conform itself to the levels it encounters in historical reality. The first level is the level of experience; it is closely bound up with that of symbolization. Voegelin contends that ‘equivalences of symbolization’ are the result of ‘equivalences of experience’, and that the language of equivalences (on the level of symbolization) removes the focus of attention from the symbols used by man to the engendering experiences. These experiences, too, cannot be the resting point of our analysis – there is no resting point, and there is no access to experiences except through symbols. So the levels of experience and symbolization combinedly constitute the first historical trail for our analysis to follow. A third level, and a second trail, is constituted by concepts, doctrine, and other forms of indicative language relating to conscience. My particular concern will be with the relations between this level and the first two, under which heading come the solidification of symbols into doctrine, but also the relation between concepts of, or doctrines concerning, conscience and experiences of conscience.<sup>125</sup> The last trail belongs to the ‘flat’ level of the use of the word ‘conscience’ and its (supposed) equivalents; the word is not simply to be

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<sup>121</sup> Ibid., 122.

<sup>122</sup> Whitehead (1968), 51.

<sup>123</sup> Ibid., 138.

<sup>124</sup> Voegelin (1990a), 132.

<sup>125</sup> On the development from symbol to doctrine see chapter 2.3.

identified with the symbol. There may be continuity in the use of the word without a corresponding continuity on the symbolic level, as for instance when symbols have turned to doctrine.<sup>126</sup> Also, an equivalent symbol may be operative under another name. The term ‘conscience’ is the English (and French) form of the Latin ‘conscientia’, which is a transliteration of the Greek ‘syneidesis’ (συνειδησις); but Hebrew and Egyptian sources are often pointed out, that would give us earlier ‘versions’ of conscience. We will see later on to what extent they offer us equivalent symbols.

In looking for continuity, it must be clear that I am not looking for *constants*. In the first sentence of “Equivalences of Experience”, Voegelin speaks of a “search for the constants of human order in society and history”, but on the same page he makes clear that: “What is permanent in the history of mankind is not the symbols but man himself in search of his humanity and its order.”<sup>127</sup> Whitehead once said that there are no ‘natural laws’, only ‘temporary habits of nature’.<sup>128</sup> Symbols do not come close to having the stability of those habits of nature. Yet, there is continuity. The continuity on the level of symbolization depends largely on the continuity on the level of experience. I have adopted Voegelin’s language of equivalences. To speak of equivalent experiences implies that there is variety. This variety is likely to be multiplied on the level of symbolization, as no symbol fully ‘covers’ the experience that engendered it. Accordingly, there will be a variety of (dis)continuous elements that can be said together to make up the symbol of conscience. The ‘flat’ level of the term ‘conscience’ (and its equivalents), weaves through the levels of symbolization on the one hand and doctrine on the other. It provides a visible trail through history, but at any moment in time it remains to be ascertained whether it has attached itself to symbol or doctrine. This will concern us later in this chapter. Finally, there is continuity in change, as when symbols turn into doctrine. The discontinuation on the symbolic level does not preclude continuity between symbol and doctrine. There is no abrupt break between the two.

The fact that the different levels are often intertwined makes it impossible to deal with them separately. In my overview of the historical career of the symbol of conscience, and throughout this book generally, I will keep pointing out (where necessary) to what level of analysis we are led by the data at hand.

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<sup>126</sup> Cf. Dekkers (2003), 198: “Er bestaat een spanningsverhouding, een breuk, tussen het gebruik van de term geweten en het fenomeen waarnaar die term verwijst.” [“There is a tensional relationship, a rift, between the use of the term conscience and the phenomenon which that term refers to.”] I object to the terminology of ‘referring’ Dekkers uses, but he seems to make a similar point, nevertheless.

<sup>127</sup> Voegelin (1990a), 115.

<sup>128</sup> Whitehead (1956).

### **i.4.3. Much history, little psychology**

Finally, it might be good to say a few words to those readers who might be surprised by the amount of attention I pay to history, and to those (possibly the same people) who are surprised to find so little psychology in a book on this subject.

#### *i.4.3.1. Why history?*

History is relevant to an understanding of any subject, but that does not always justify long historical excursions. What is different here, that *does* justify the omnipresence of history in this book? A number of things do. First of all, we needed to know why the legitimacy of conscientious objection might be in question today. It is my view that we cannot answer this question without recourse to the history of expressions of and thought about conscience. In particular, we need to see that a symbolic understanding of conscience gradually gave way to an indicative one. The claim that such a development occurred cannot lightly be made. It needs to be supported by an overview of historical developments. Secondly, because we cannot understand conscientious objection without understanding conscience; because conscience must primarily be understood symbolically; and because a symbolic understanding of conscience is best acquired by looking at expressions of conscience that preceded processes of differentiation and doctrinalization, we need to turn to historical examples. Thirdly, I will argue that the difference between ‘religious’ and ‘secular’ conscientious objections is greatly overstated. My historical approach to conscience allows me to show what is constant in all expressions of conscience. Fourthly, the problems that theories of conscientious objection (should) attempt to solve are most clearly visible in the history of (notions of) freedom of conscience.

I could go on like this, but the point is clear. I realize that, however many reasons I would adduce, I could never convince everybody. They are partly right (but *only* partly): I cannot mask my own interest in history by all such reasons as the above. I hope that others will also appreciate the intrinsic interest of particular historical developments. At any rate, once it is decided that conscience can only properly be understood when recourse is taken to its history, this obliges one to (attempt to) do justice to the people and the periods under discussion in their own right. Merely to pluck out expressions of and references to conscience produces a travesty of history, and it contributes nothing to an understanding of conscience. Such expressions must be understood in their context.

#### *i.4.3.2. Why not psychology?*

What about psychology? If we want to know what conscience is, should we not just ask a psychologist? As must be clear be now, I think not. The suggestion itself betrays a particular view of conscience that I believe is much too narrow. As one of the ‘special sciences’, psychology studies phenomena

under a specific aspect. That means that the psychology of conscience does not exhaust the phenomenon. Philosophy, understood as an attempt to provide concepts in terms of which *all* of our experience can be interpreted, transcends such specialization. It can provide us with a non-reductionist understanding of conscience.

Secondly, my overview of the history of expressions of and thought about conscience reveals psychological views to be the result of processes in which what is most fundamental about conscience is forgotten. In view of this, it would be odd for me to turn to psychology to find out what conscience is. Moreover, until quite recently, conscience was more or less forgotten by psychologists altogether. Only recently has the concept been picked up again, by Kochanska and others.

The best guide to the psychology of conscience (of the twentieth century, before Kochanska took up the concept) is Andreas Zimmer's *Das Verständnis des Gewissens in der neueren Psychologie*.<sup>129</sup> He works with a distinction between behaviour-oriented and inner-oriented psychologies. Under the first heading are subsumed: classical behaviourism, ethological approaches, developmental psychology (in the wake of Piaget), and combinations and refinements of those, among which we find Bandura's social-cognitive psychology, which entails a system-theoretical approach. Inner-oriented psychologies are Freudian and Jungian psycho-analysis, and humanistic and existentialist psychology. In a conference paper, I discussed how these approaches would most likely deal with four experiences of conscience: that of Wordsworth (see chapter 5), that of the catholic Thomas Fitzherbert and the non-conformist Francis Wodehouse, both from the sixteenth century, and the experience of Quaker Richard Seller, press-ganged into the British Navy in 1665.<sup>130</sup> Their experiences of conscience are very different, but all in their own way unusual; Fitzherbert and Wodehouse, for instance, became physically unwell (and violently so) from attending a church service from another religious denomination than their own. All these experiences of conscience are highly emotional. Having distilled the main characteristics of different psychological approaches from Zimmer's discussion of them, I stipulated the directions in which psychological interpretations of these

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<sup>129</sup> Zimmer (1999).

<sup>130</sup> Fitzherbert, Wodehouse, and Seller are all repeatedly referred to in part III, ch. 13, "Aspects of conscientious objection (1)". I presented the paper "Conscience, religious emotions, and psychopathology" at the conference *Religious Emotions: Historical and Contemporary Perspectives*, Antwerp, 19-21 September 2005. For Fitzherbert, see Henry Foley, *Records of the English Province of the Society of Jesus*, 7 vols., London, 1875-1883, vol. 2, 210, quoted in Wright (1999), 123; for Wodehouse, see Philip Caraman (ed.), *The Other Face: Catholic Life under Elizabeth I*, Longmans, London, 1960, 59-60, quoted in Wright (1999), 124; Richard Seller's story was published as *An Account of the Sufferings of Richard Seller, of Keinsey, a Fisherman*, Philadelphia, 1772, reprinted in Brock (ed.) (1993), 5-29.

experiences of conscience might go. From the perspective of inner-oriented approaches, all three of the above examples show signs of pathology in some way or another. The experiences involved in all examples must be considered delusional, even hallucinatory. Fitzherbert's horror and Wodehouse's bowel problems (see chapter 13) must be seen as the result of unfortunate influences exerted by their social environment when they were young. From the perspective of behaviour-oriented approaches, it is irrelevant whether Wordsworth's guilt was appropriate; the important thing is that he turned back, as society would think desirable. Also, Richard Sellar's case, (which in my terms will prove to be the perfect example of an experience of conscience in which ultimate concern manifests itself in the form of inspiration), does not easily lend itself to a behaviour-oriented interpretation of conscience in terms of self-control and self-censorship. More generally, it seems that neither approach offers us an *understanding* of these experiences. Instead, they are bent on explaining conscience in any terms, except those that would agree with people's self-understanding. Neither in inner-oriented nor in behaviour-oriented approaches is there much, if any, room for the intentionality of conscience. If we are to understand experiences of conscience, we must be willing to sympathize with them, to dwell in them, instead of merely explaining them (away) from a third-person perspective.

Much of the above criticism applies also to more recent philosophical concepts of conscience, which have been strongly influenced by modern psychology. It is mostly through these concepts that psychology plays a role in this book.

Kochanska's work focuses on the development of conscience in (early) childhood. However interesting her research and her findings may be in themselves, her work is characterized by a lack of conceptual reflection. In none of the six articles I mentioned before does she (or do the authors) give a definition of conscience; in none of them is it explained what they mean by the term. Rather, the meaning of 'conscience' seems to be taken for granted, as if we all know to what it refers. Thus, Kochanska (and her co-authors) speak of 'measures of conscience', the 'structure of conscience', the 'organization of conscience', the 'development of conscience' and of conscience *sec* without once stopping to explain the term. The closest we get to a concept of conscience is this: "Conscience has a rich conceptual history in human thought. For centuries, we have wondered how individuals internalize the values of their families and societies and how those values become a reliable inner guiding system for conduct and a vehicle for the intergenerational transmission."<sup>131</sup> The second sentence presumably contains what 'conscience' is. My first comment would be that 'we' have not wondered about all this for centuries at all, because 'we' have only started wondering what Kochanska wonders about since the arrival of modern

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<sup>131</sup> Kochanska and Aksan (2004), 299.



developmental psychology. Secondly, I cannot help feeling that the ‘rich conceptual history’ undergoes a reductive transformation here; as if conscience is merely a matter of the internalized values of parents and society. In some articles, Kochanska argues against approaches that identify conscience with one of its components (moral emotion, cognition, conduct), and for a comprehensive approach that envelops all these components.<sup>132</sup> While this is a very sensible approach, we must not think that if we take all these components together, we know what the term ‘conscience’ means. Laying out all the component parts of a car does not tell you what a car is, but the problem in this case goes beyond this. Conscience, in the end, is not something that can be measured with the methods of (empirical) psychology. It transcends the level of psychology – the whole book can be considered an argument for this view. Psychological categories like those developed by Kochanska and her colleagues, valuable as they may be, cannot tell us what is so important about conscience and conscientious objections – nor could they undermine that importance. What Kochanska’s work does do is provide insight in the preconditions for the development of conscience. This, however, is not my subject. As I explain in chapter 8, I presuppose a (more or less) *mature* conscience. The first toddler with conscientious objections is still to be born. The conscience of one conscientious objector may be more mature than the other, but if we want to know if conscientious objections deserve a special respect compared to other kinds of objection, we need to know what a mature conscience is. Where I discuss that question, I will briefly refer to the work of developmental psychologists.

Enough about my reasons to ‘leave out’ psychology. Enough, too, about my ‘method’. I have good hope that those who have not yet been scared away by all the above will find much of interest in the following.

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<sup>132</sup> Kochanska and Aksan (2004), 300; Aksan and Kochanska (2005), 506; Kochanska, Forman, Aksan, and Dunbar (2005), 20.

# Part I



# 1. The symbol of conscience

“When two, or more men, know of one and the same fact, they are said to be CONSCIOUS of it one to another; which is as much as to know it together. And because such are fittest witnesses of the facts of one another, or of a third; it was, and ever will be reputed a very Evill act, for any man to speak against his *Conscience*; or to corrupt, or force another to do so: Insomuch that the plea of Conscience, has been always hearkened unto very diligently in all times. Afterwards, men made use of the same word metaphorically, for the knowledge of their own secret facts, and secret thoughts; and therefore it is Rhetorically said, that the Conscience is a thousand witnesses. And last of all, men, vehemently in love with their own new opinions, (though never so absurd,) and obstinately bent to maintain them, gave those their opinions also that reverenced name of Conscience, as if they would have it seem unlawfull, to change or speak against them; and so pretend to know they are true, when they know at most, but that they think so.”

THOMAS HOBBS, *Leviathan*, Cambridge University Press, Cambridge, 2000 [1651], chapter 7 (48).

## 1.1. INTRODUCTION

There are two modes of speaking about conscience, both of which are potentially legitimate. The history of expressions of or concerning conscience illustrates this, and it is true now. I will call them, with terms derived from Michael Polanyi, the symbolic and the indicative mode.<sup>1</sup> These modes must not be taken to be mutually exclusive, as if a term or expression is either fully symbolic, or fully indicative. They are the extremes of a spectrum. Expressions are often partly symbolic, and partly indicative. That is, the two modes of speaking intermingle.

I take the symbolic mode of speaking to be primary, and the indicative mode to be secondary or derived. What this means will become clear in the course of this chapter. In short: the symbolic mode of speaking is primary, because it is closer to people’s experience. Experiences engender symbols, which express those experiences. These symbols then acquire a life of their own. Once the original experience is lost, the symbols ‘dry up’. They are then on their way to become doctrine, or some other form of the indicative mode of speaking. When symbols are reflected upon, this reflection, too, is usually in the indicative mode. This means that the terms used are not so much understood as expressions of experience, but rather intended to point out some existent entity, that is: to refer to something.

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<sup>1</sup> In the symbolic mode one does not really speak *about* conscience; one expresses oneself by means of the symbol of conscience.

The term 'conscience', then, may be an expression of certain experiences, or it may (be intended to) refer to some 'thing'. It may do both to a certain extent. If it is clear, in a certain case, that the term is used symbolically, its meaning is still not self-evident. If it is clear that the term is used indicatively, its referent is not obvious. The most confusing situation is that situation in which an author himself or herself does not know in which mode he or she is speaking about conscience. Today, we are confronted by an almost unsurveyable number of concepts, definitions and descriptions of conscience, both within and outside of the field of philosophy. Taken together, the whole must still be understood as (unconsciously and indirectly) expressive of a certain class of experiences. When we take a closer look at them, we see that many of them are the result of a certain forgetfulness: what is forgotten is that the primary mode of speaking about conscience is symbolic. Symbolic expressions are then taken as indicative terms, as descriptions or definitions. Other definitions are conscious attempts to achieve greater consistency in and coherence between existing definitions. Finally, there are concepts which include an awareness of themselves as concepts, so to speak. In their case, their secondary nature as derivations from symbolic language is not forgotten, and the danger of absolutizing one or a number of aspects of conscience at the cost of others is recognized. This is what I take to be the only fully legitimate way of speaking indicatively about conscience. Such a concept is what I call, after Bergson, a *fluid* concept. This will be the topic of chapter 8.

Before we can arrive at such a concept, we need to gain some clarity in the mist surrounding conscience. The present lack of it is no reason to abandon the notion altogether; the notions that are of the greatest importance to us (friendship, love, God) tend to be shrouded in mist. This tends to make them all the more appealing. Much of the mist surrounding conscience, however, does not naturally envelop it, but is man-made, stemming from the smouldering debris left behind by those who previously sought their way through the fog. Some of them camped there for a while, made breakfast on a small fire, and left without result. Others have left the remains of great bonfires, lit to celebrate their success. To someone who puts up his tent there now, it is unclear what made them so happy.

What I will do in this chapter, in pursuit of clarity, is to provide an analysis of conscience as a symbol. That means that I will not look at conscience as (a term referring to) a thing or a disposition that one can have or not have; nor is the term taken to signify a source of moral knowledge that one can derive moral principles or rules from, as is also quite common. 'Conscience' will be treated as a complex symbol that expresses certain *experiences*. Experiences, via the symbols they engendered, take center stage in this chapter. Only after we have gained an understanding of the symbol of conscience will philosophical definitions, theories, and doctrines come into view. They will feature in a sketch of certain trends in the historical

development and transformation of the symbol of conscience. This, however, is the subject of chapter 2.

The background for the present chapter lies in sections 2, 3 and 4 of the general introduction. I will start by formulating a preliminary understanding of conscience. In the following section, I discuss the emergence of the symbol at the hand of Ancient Egyptian texts and Plato's *Apology*. Then, I will embark on an analysis of the core elements of the symbol of conscience. The chapter ends with a section on some 'imaginative' symbols, as for example that of the 'worm of conscience'.

## 1.2. PRELIMINARY UNDERSTANDING OF CONSCIENCE

At the outset of his analysis of the symbol of immortality, Voegelin identifies the class of experiences that engendered the symbol as 'the varieties of religious experience', (referring to William James), thereby securing the proper pre-understanding of the subject in his audience. The need for this is obvious. One cannot embark on an analysis of anything, without having a certain pre-understanding of it. It is tempting to speak, in the case of conscience, of 'the varieties of moral experience', but this will not do. Besides the fact that this phrase does not have the authority behind it that the former has, it is also too narrow. I suggest that 'conscience', like the related term 'consciousness', and the terms 'experience' and 'symbolization', can be seen as denoting 'the area where the process of reality becomes luminous to itself'.<sup>2</sup> This may seem to be at variance with my characterization of conscience as a symbol conveying truth concerning insistent reality (reality *within* consciousness), but it is not. Consciousness is not literally something *in* which there is experience; rather, it is 'a mode of attention', as Whitehead calls it, a qualification of experience.<sup>3</sup> Similarly, conscience can be taken to be such a qualification of experience, but a *different* qualification of a *certain class* of experiences. In short: conscience is a special kind of consciousness.<sup>4</sup>

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<sup>2</sup> Voegelin (1990a), 120.

<sup>3</sup> See the general introduction.

<sup>4</sup> It is important to note that we are now speaking of conscience *indicatively*, as is unavoidable in an analysis of experience and symbolism. In chapter 8 I will present a diagram, in which I explain the relations between the symbol of conscience and indicative use of the term. In the middle are experiences of a certain (moral-religious) class, that belong to a certain mode of consciousness, to which we may (indicatively) refer as 'conscience'. The symbol of conscience was engendered by such experiences, and became the 'natural' articulation for them. With their indicative use of the term 'conscience', people refer (often indirectly and without knowing it) to the mode of consciousness we have also called conscience. (I say 'indirectly and without knowing it', because what people tend to refer to directly is a reification of this mode of consciousness. The intentional object of indicative use of

The pre-understanding that we have of conscience results from a combination of things: with many of us, there will be a reaction (unregistered, to be sure), evoked by confrontation with the word, that entails at least a tendency to ‘surrender ourselves’ to the symbol, to let ourselves be carried away with it. This may sound like an exaggeration to some, but then they should realize what is meant by ‘surrender’; I am simply referring to the way meaning is constituted symbolically. Secondly, our pre-understanding is informed by our knowledge of the place(s) occupied by conscience in our language, and in particular networks of concepts. In other words: we know how and in which contexts to use the word, and in combination with which other words (e.g. guilt, remorse, integrity, or certain adjectives like ‘troubled’, ‘stained’, or ‘quiet’). Thirdly, we may respond to the word by the spontaneous evocation from memory of metaphors commonly used as expressions of conscience: ‘the man within’, ‘heart’, ‘the spark of conscience’ perhaps. Fourthly and finally, our pre-understanding is shaped by our knowledge of theories and concepts of conscience. For instance, on hearing the word ‘conscience’, the term ‘super-ego’ may spring to mind. Catholics with some knowledge of catholic moral theology may hear ‘conscience’ and supplement it with ‘synderesis’ – a distinction which goes back to medieval scholasticism.

To clarify our pre-understanding of conscience, it is useful to look at the etymology of the term.<sup>5</sup> That ‘conscience’ and ‘consciousness’ are related terms is obvious. In English, ‘conscience’ may in certain contexts still be used instead of ‘consciousness’. ‘Conscious’, at least up to the nineteenth century, was also used to convey the meaning of knowledge of oneself as guilty or innocent.<sup>6</sup> Samuel Johnson’s dictionary from 1755 gives two meanings for ‘consciousness’: “1. The perception of what passes in a man’s own mind. (...) 2. Internal sense of guilt, or innocence.”<sup>7</sup> The third meaning Johnson gives for ‘conscience’ is “[c]onsciousness; knowledge of our own thoughts or actions.” Elisha Coles’ 1676 dictionary, not bothered with the alphabetical order of the terms, takes up conscience in its description of ‘conscientious’: “*Conscientious*, according to *Conscience*, the witness of one’s

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the term conscience is often a ‘faculty’, a ‘thing’ in the mind. What I say here is that if we correct for the mistake of reification, we find the proper object of ‘conscience’, indicatively used, in this mode of consciousness.) So, in simplified form: the experiences engender the symbol and are articulated through the symbol, and the mode of consciousness ‘in which’ people have such experiences is what people refer to with their indicative use of ‘conscience’. All this will be elaborated upon in chapter 8. That I touch upon it in this early stage is unavoidable, for both our pre-understanding and the fluid concept I develop in chapter 8 belong to the indicative mode of thought.

<sup>5</sup> See 3.2.2 for the translation of ‘conscientia’ into German.

<sup>6</sup> The OED (Oxford English Dictionary) gives an example from 1827.

<sup>7</sup> Johnson (1983).

own heart.” The next entry is: “*Conscious*, *l.* [knowing ones self] guilty.”<sup>8</sup> Another dictionary, twenty years earlier, does not even mention conscience, but has only “Conscious (*consciens*) culpable, that is of Council, or guilty of a thing.”<sup>9</sup> While in present-day (non-poetic) English the distinction between ‘conscience’ and ‘conscious(ness)’ is pretty clear, the French still have only one word for both, which is ‘conscience’. In ancient and Hellenistic Greek too, the meaning of ‘syneidesis’, which the Romans translated as ‘conscientia’ lay close to what we would call ‘consciousness’ (of something).<sup>10</sup> C.S. Lewis wrote an insightful article about the relations between ‘conscience’ and ‘consciousness’.<sup>11</sup> He starts out with an explanation of the linguistic origins of the terms. The Greek ‘oida’ and the Latin ‘scio’ mean ‘I know’. With the prefixes ‘sun’ (or ‘syn’) and ‘cum’ (which becomes ‘con’), meaning ‘with’, we have ‘sunoida’ and ‘conscio’. The accompanying nouns are ‘syneidesis’ and ‘conscientia’; the Latin adjective is ‘consciens’. Lewis goes on to distinguish two branches of meaning: one with the full ‘together-sense’ of the prefix, and a weakened branch, in which the prefix is almost inoperative. The French ‘conscience’, Lewis says, descends from the latter. In English, the weakened branch is represented by the term ‘consciousness’. Examples from both branches can be found in classical literature.

Now, when I speak of the symbol of conscience, I see the prefix as important; at the same time, it is important to remember that there is a close connection to what we now call ‘consciousness’, so as to prevent a narrow, exclusively moral reading. Generally, the symbol of conscience expresses a special kind of awareness with regard to (usually) one’s own actions. The prefix ‘con’ suggests both distance and intimacy. I know something ‘with myself’, or ‘with someone else’ – which means that I step back from myself, and I am not that someone, though I share certain knowledge with myself or the other; my own action is accompanied by a certain detached, yet linked awareness. From the beginning, the Greek ‘syneidesis’ was often used to express consciousness of one’s own or another’s forbidden or blameworthy conduct. So, the possibility of and tendency towards inclusion of a moral element was present from the start. In the course of history, it became a dominant element. In many languages, ‘conscience’, or a translation of the term, became restricted to its moral meaning. Though I wish to avoid a narrow reading of ‘conscience’, relating it exclusively to moral experiences, my interest in the symbol of conscience lies in what ‘conscience’ adds in meaning to Voegelin’s ‘consciousness’. In effect, it is the difference in quality between conscience and consciousness that matters. Extending Lewis’ idea of the ‘together-sense’, I suggest that the crucial difference between the

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<sup>8</sup> Coles (1971).

<sup>9</sup> Blount (1969).

<sup>10</sup> See chapter 2.2 for more on syneidesis and related terms.

<sup>11</sup> Lewis (1991), chapter 8, “Conscience and Conscious” (pp. 181-213).



symbols of conscience and consciousness lies in the degree and kind of involvement they express. The difference in degree may itself be great enough to constitute a difference in kind. The symbol of conscience expresses not only an awareness accompanying one's actions, but also the depth of one's involvement – a 'matter of conscience' is a matter of ultimate concern.<sup>12</sup> One cannot remain indifferent to the kind of awareness of (the moral/religious quality of) one's actions that is expressed in the symbol of conscience – which sets conscience apart from consciousness. Consciousness differs from conscience in that it does not by definition entail any strong involvement. Consciousness need not be detached and indifferent, though – in fact, it hardly ever is. But the involvement or interest of 'normal' consciousness is of another kind; it is not moral-religious in nature. My analysis of the emerging symbol of conscience in the following section will shed more light on what sets conscience apart from ordinary consciousness; more precisely, on what allows us to speak (indicatively) of conscience as a particular mode of consciousness.

### 1.3. THE EMERGENCE OF THE SYMBOL

What I have to look for here are clear expressions of that class of moral-religious experiences that according to our pre-understanding might be classified as experiences of conscience. At first, our pre-understanding is all we have to guide us. In the hermeneutic process of identifying and analysing expressions of conscience by constant reference to our pre-understanding, however, more clarity emerges, and we become able to tell why some expressions ought to be classed among expressions of conscience and others not. So our pre-understanding does not limit the investigation, but it functions as an open-ended starting-point. The following does not represent the whole process, but rather the last stages of it, where the actual analysis of the symbol of conscience begins.

The first problem to be solved, then, is the question of where to commence the analysis. It is a problem that Voegelin had to tackle as well. He describes the problem as follows: "...on the one hand, the case selected should be an historically early one, in order to avoid questions which otherwise might arise with regard to the traditional character of the symbols and a correspondingly suspect authenticity of the experience. But on the other hand, it has to be culturally late enough for an exegesis of the experience to be so articulate that the connection between the truth

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<sup>12</sup> 'Ultimate concern' is the term Tillich uses to describe faith: "Faith is the state of being ultimately concerned: the dynamics of faith are the dynamics of man's ultimate concern." (Tillich [1957], 1.)

experienced and the symbols expressing it will be intelligible beyond a doubt.”<sup>13</sup>

This problem can be restated in terms of ‘compactness’ and ‘differentiation’.<sup>14</sup> Voegelin speaks of compact and differentiated experiences, and corresponding compact and differentiated symbolizations. The compact experience of the cosmos, for example, is articulated in the form of myths, showing man to be part of a cosmos that is full of gods, living alongside (and in many respects behaving like) man. This experience, Voegelin says, “has to yield to the experience of eminent divine presence in the movement of the soul in the *metaxy*”.<sup>15</sup> Voegelin starts his analysis of the symbol of immortality with an Egyptian text of about 2000 B.C. He admits that there are more differentiated accounts, rendered by Plato and St. Paul, and explains wherein this differentiation consists: they move on the ‘level of noetic and revelatory experiences’, they can make use of ‘a more diversified arsenal of symbols’, and ‘their expression has become more supple’; however, Voegelin asserts that they are fundamentally variations of the motifs found in the Egyptian text.<sup>16</sup>

### 1.3.1. Ancient Egypt and the dawn of conscience

That Voegelin starts with an analysis of an ancient Egyptian source does not compel us to do so, of course, but as it happens, other authors have started looking for conscience in Egypt, and it is worth our while to see why. An often cited work in literature on conscience is James Henry Breasted’s *The Dawn of Conscience*.<sup>17</sup> He quotes, among others, from a text that was probably written just after the end of the New Kingdom, around 1000 B.C., the *Wisdom of Amenemope*. This text was written in a time when a new religious movement was taking shape, and it expresses the core of this movement, which is ‘personal piety’.<sup>18</sup>

Before we look at some passages from that text (and some other texts), we should ask why we should look at an Egyptian text from three millennia ago at all. The wikipedia tells us that “Breasted was in the forefront of the generation of archaeologist-historians who broadened the idea of ‘Western Civilization’ to include the entire ‘Near East’ in Europe’s cultural

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<sup>13</sup> Voegelin (1990b), 58.

<sup>14</sup> See chapter 2.2.

<sup>15</sup> Voegelin (1990d), 207.

<sup>16</sup> Voegelin (1990b), 61. The ‘noetic’ denotes a specific aspect of human reason. Henkel (1998), 38, defines ‘noetische Vernunft’ [noetic reason] as “die auf die rechte Ordnung von menschlicher Psyche und Gesellschaft gerichtete Vernunft” [reason as directed towards the right order of the human psyche and of society].

<sup>17</sup> Breasted (1933).

<sup>18</sup> On this personal piety, in German ‘persönliche Frömmigkeit’, see Brunner (1983), 33-35, 44-46, and chapter 5 (103-121).

roots.”<sup>19</sup> Living from 1865 to 1935, so around 1900, Breasted grew up and received his education in a time when Egypt was (still) very much in vogue. Napoleonic campaigns in Egypt did much to foster interest in its civilisation, bringing back to Europe many objects of historical interest. The French linguist Jean François Champollion has been called the Father of Egyptology, and he is famous for deciphering the ancient Egyptian hieroglyphs. This was a long process, culminating in 1824 in his *Précis du système hiéroglyphique*.<sup>20</sup> In the remainder of the nineteenth century, with the hieroglyphic code just partly cracked, fascination with ancient Egypt only grew. This was supported, undoubtedly, by the strong presence of Egypt in the Old Testament, but also, more mundanely, by the growth of tourism.<sup>21</sup>

In the intellectual climate of the nineteenth and early twentieth century, a finalistic philosophy of history grew, in which all world history worthy of the name culminated in Western Civilization. We, Europeans, were seen as the heirs of a line of civilizations and empires: closest to us, Rome; before that, Greece; before Greece, Egypt.<sup>22</sup> Christian variants abound, focusing on the eighteenth dynasty (1562-1308 B.C.). Around 1375 B.C., Amenhotep IV became pharaoh. He was, one author remarks, ‘a man of great individuality’, ‘a lover of piety’, and “resolved to leave a religious impress upon his people and his time”.<sup>23</sup> Amenhotep was what has been called a ‘disk-worshipper’, holding that the God manifests himself in the heat (the rays) of the sun. Braudel calls Amenhotep IV ‘the strangest pharaoh in history’, and explains that “[t]he sun god had revealed himself to the pharaoh, who proceeded to proclaim the omnipotence of this single god, represented in simple and symbolic fashion by an image of the sun as a disc with rays ending in outstretched hands. This god’s name was Aten and the pharaoh took the name of Akhenaten, meaning ‘he who has been approved by Aten’.”<sup>24</sup> Akhenaten’s (or Akhnaton’s, or Ikhnaton’s) monotheism was of particular interest from a certain Christian perspective. Christian-inspired progress views of history saw the step from polytheism to monotheism as religious progress (and the step from Jewish monotheism to Christian monotheism as a further advance). For that reason, Mercer refers to Ikhnaton (as he calls him) as a ‘religious genius (...) far in advance of his time’.<sup>25</sup> He compares Ikhnaton’s ‘radical reforms’ with those of ‘Josiah in Israel’, only Ikhnaton’s were even more ‘thoroughgoing and radical’. At the

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<sup>19</sup> See [http://en.wikipedia.org/wiki/James\\_Henry\\_Breasted](http://en.wikipedia.org/wiki/James_Henry_Breasted).

<sup>20</sup> “Giants of Egyptology 7: Jean François Champollion”.

<sup>21</sup> Interest in Egypt did not dwindle in the twentieth century. Howard Carter’s discovery of Tutankhamen’s grave in 1922 gave a fresh boost to people’s fascination with the Orient.

<sup>22</sup> At the same time we are also, of course, the heirs of a Judaic-Christian tradition.

<sup>23</sup> Mercer (1919), 28.

<sup>24</sup> Braudel (2002), 156.

<sup>25</sup> Mercer (1919), 34.

end of the day, however, he denies Ikhnaton his monotheism, loath, it seems, to accept its 'discovery' before Jewish times.<sup>26</sup> Mercer concludes: "The Egyptian idea of God had gradually developed from a primitive and crude anthropomorphism to a spiritual and ethical henotheism, and perhaps to a practical monotheism. This took place over six hundred years before the Hebrew prophets declared the oneness and uniqueness of Jehovah the God of Israel. (...) Egypt (...) was (...) the first and one of the greatest of schoolmasters to lead men to Christ."<sup>27</sup> From a similar perspective, E. A. Wallis Budge discusses Amen-em-apt's (Amenemope's) writings – he, however, is not reluctant to say that this man's monotheism is beyond doubt.<sup>28</sup> He begins a section on the morality and religion of Amen-em-apt, who lived in the first half of the eighteenth dynasty, by saying that "[a] perusal of this Teaching will, I believe, convince the reader that it enshrines the highest system of morality ever taught or promulgated in Egypt, and that from the point of view of morality it deserves to rank with the Book of Proverbs and Ecclesiastes".<sup>29</sup> This estimation undoubtedly has to do with Amen-em-apt's supposed monotheism.<sup>30</sup> According to Budge, Amen-em-apt ascribed to his God (whether this was Ra or not) "the attributes of the Hebrew and Christian God".<sup>31</sup>

Today, most historians would agree that this sketch of a linear history leading from empire to empire, from civilization to civilization, culminating in Western civilization, is absurd; the attempt to turn the Egyptians into proto-Europeans preposterous. Nevertheless, 'histories of ideas' which simply list the Latin precursors of some of our concepts, its Greek predecessors, and its Egyptian ancestors are the descendants of that philosophy of history.

That history is not a gradual ascent to modern Western liberal society (with its science, technology, capitalism, et cetera) does not mean that there are no historical connections between Egyptian civilization and ancient Greece, via Greece with Rome, and so on. If we keep in mind that there are

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<sup>26</sup> Ikhnaton's monotheism is now generally acknowledged. See Braudel (2002); Brunner (1983), 35-46; Lichtheim (1976), 89-100.

<sup>27</sup> Mercer (1919), 46.

<sup>28</sup> Amenemope (or, Amen-em-apt) should not otherwise be associated with Akhenaten; the latter's religion constituted a disruption of Egypt's religious development, the movement of personal piety. Amenemope's writings belong to this movement. Hence Budge (1924), 135, also speaks of Amen-em-apt's 'personal religion'. See Brunner (1983), 35, and 116-117. Brunner would probably not accept Budge's judgement concerning Amenemope's monotheism. Though the pious tended to refer to their gods in a general fashion, this was not, in Brunner's judgement, because they were monotheistic; see Brunner (1983), 112.

<sup>29</sup> Budge (1924), 130.

<sup>30</sup> Ibid., 135.

<sup>31</sup> Ibid., 136.

always multiple developments occurring at the same time, that it is only with hindsight that certain directions of development seem necessary and unavoidable, and that there is continuity as well as discontinuity in history, there is nothing wrong with an exploration of some of those connections. There is more continuity between Greece and Rome than there is between Egypt and Greece. If ideas found in Egypt are also, millennia or centuries later, found in Greece, they might very well be linked, but it is not likely that the link has the form of direct cultural transmission. It is much more complex than that. First of all, we should note that in the millennia B.C. in which the Old, the Middle, and the New Kingdom are placed something of a Mediterranean culture grew, even though there were separate cores of civilization, and even though Egypt was a relatively closed civilization. There was trade, and hence there was cultural exchange. Ikhnaton's montheism is often associated with the rise of a form of 'cosmopolitanism' and universalism.<sup>32</sup> Many aspects of Egyptian religion, most notably sun worship, were common throughout the Near East and the Mediterranean. In Egypt's late period, after the collapse of the New Kingdom (in the eleventh century B.C.), there was with we might call heavy contact with other civilizations, for instance through invasions by the Assyrians (in the seventh century B.C.) and the annexation of Egypt into the Persian Empire by Cambyses in 525 B.C. After a second short period of Persian rule, Egypt was conquered by the Macedonian king Alexander the Great in 331 B.C. This is the beginning of the Graeco-Roman period, which would last until the seventh century AD. In the last four centuries B.C., Egypt was to a certain extent taken up in a Hellenistic culture, which means that there was at least some cultural exchange. Alexandria was one of the great centres of Hellenistic culture. It was also somewhat of a strange body in Egypt, however.<sup>33</sup> There was no free and easy intermingling of Egyptian and Hellenic ideas. Otto ascribes this primarily to the strangeness to the Greeks of the Egyptian way of thinking, which persisted due to the mutual difficulties in understanding each other. Language and writing, Otto states, constituted a virtually insurmountable obstacle to the penetration of the Egyptian way of thinking.<sup>34</sup> Nevertheless, as I said, there was some cultural exchange, and according to Köster it is first and foremost in the field of religion that we can speak of 'syncretism', of an 'actual intermingling'.<sup>35</sup> Moreover, we see this first in the Egyptian empire,

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<sup>32</sup> Braudel (2002), 156-157; Brunner (1983), 39; Otto (1955), 160-161.

<sup>33</sup> Köster notes that there were only two Greek cities in Egypt, Alexandria and Naukratis, and that an opposition between the Greek urban population – the Jews of Alexandria are counted among the Hellenes – and an indigenous rural population persisted. Among the latter, Egyptian remained the colloquial language. Helmut Köster (1980), 41.

<sup>34</sup> Otto (1955), 256.

<sup>35</sup> For 'syncretism', see Köster (1980), 169ff.

where oriental gods and traditions turn up ‘in Greek clothing’.<sup>36</sup> The other way around, Köster says, ‘the fascination of the Greeks for everything new and strange’ resulted in the adoption of oriental elements, especially in the area of religion.<sup>37</sup> In general, Hellenistic culture was the result of an ‘antithesis of East and West’. “Diese Antithese wirkte weder als unversöhnlicher Gegensatz, noch als Anreiz zur Verschmelzung, sondern im Sinne einer gegenseitigen Faszination, als gegenseitige Anregung auf politischem, wirtschaftlichem und kulturellem Gebiet.” Importantly, “[a]uf jedem Sektor ist das griechische Element in dieser Antithese maßgebend”.<sup>38</sup> Brunner also remarks on the difficulty of pointing out the precise influence of Egyptian culture on other cultures.<sup>39</sup>

I cannot go into this matter in more detail here. It is important to note that, although evidence of strong continuity between Egyptian and Greek or Roman thought would add some interest to a discussion of the emergence of the symbol of conscience, it is by no means crucial to that discussion that there would be such continuity. It is of primary importance that we find an example of an emergent symbol that is sufficiently articulate to be of use to us, without being so articulate that we must suspect it to be the result of long and thorough reflection on the subject. The symbol should be the fresh result of a ‘breaking forth of language’, or still in that process. I believe that, given certain aspects of human nature, the symbol of conscience (in whatever precise form) will emerge wherever the social conditions are right. This is not to say that I can specify those conditions, but only to say that I do not believe the experience of conscience and hence the symbol of conscience to be the unique result of one specific cultural-historical development. It can emerge in different places, at different times; it can disappear, and it can reappear. Hence, the continuity between Ancient Egypt and later empires is not of crucial importance here.

So let us turn to the aforementioned passages from the *Wisdom of Amenemope*.<sup>40</sup> Breasted quotes from this text to substantiate his claim that the “impelling voice within, which had originally grown up out of social influences and had since been further developed by many centuries of contemplative reflection, was now unreservedly recognized by the believer to

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<sup>36</sup> Köster (1980), 40.

<sup>37</sup> *Ibid.*, 169-170.

<sup>38</sup> *Ibid.*, 40.

<sup>39</sup> Brunner (1983), 149.

<sup>40</sup> Note that my selection of passages is by no means intended to be representative for the essence of Egyptian moral-religious thought; I am merely looking for the presence of expressions of conscience, and am aware of the fact that Egyptian texts are not littered with them, even where they become more frequent, as in the time of personal piety. If one should point out the essence of Egyptian religion in that period, it would be something like: ‘submit to (the) god(s), accept your fate, and put your trust in (the) god(s)’; cf. Brunner (1983), 117.

be the mandate of God himself.”<sup>41</sup> One of the most convincing passages is this one, which I will also give in the translation adopted by Lichtheim – the latter is the one on the right:

“God is in his perfection And man is in his insufficiency, The words which men speak diverge,  And divergent are the acts of God.	“God is ever in his perfection Man is ever in his failure. The words men say are one thing, The deeds of the god are another.
Say not, ‘I have no sin,’  And weary not thyself to seek conflict.	Do not say: “I have done no wrong,” And then strain to seek a quarrel;
As for sin, it belongeth to God, It is sealed with his finger.” <sup>42</sup>	The wrong belongs to the god, He seals (the verdict) with his finger.” <sup>43</sup>

Breasted notes that the third and fourth line of the first stanza quoted here are meant to express that the words of men diverge from the acts of God. There is an awareness here that human standards fall short of the absolute.

Miriam Lichtheim remarks that the worth of what she calls *The Instruction of Amenemope* “lies in its quality of inwardness”; “worldly success, which had meant so much in the past, has receded into the background”.<sup>44</sup> She speaks of a “shift of emphasis, away from action and success, and toward contemplation and endurance” which led to “an overall regrouping of values and a redefinition of the ideal man”. Modesty, Lichtheim says, is the chief characteristic of the new ideal man. “He is self-controlled, quiet, and kind toward people, and he is humble before God. This ideal man is indeed not a perfect man, for perfection is now viewed as belonging only to God.”<sup>45</sup> So Lichtheim points to man’s falling short in view of a superior moral-religious standard, as well as to a certain ‘quality of inwardness’ – something which we would also associate with conscience, and which we

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<sup>41</sup> Breasted (1933), 320.

<sup>42</sup> *Ibid.*, 328-329.

<sup>43</sup> Lichtheim (1976), 157-158 (*Amenemope*, ch. 18).

<sup>44</sup> *Ibid.*, 146. With regard to the issue of the Egyptian influence on other cultures, it is interesting that Lichtheim notes that it is quite generally acknowledged that ‘chips’ from the *Instruction of Amenemope* “are embedded in the Book of Proverbs”. This is the result of Israelite-Egyptian contact during the Ramesside period, from which the *Instruction of Amenemope* stems; see Lichtheim (1976), 147.

<sup>45</sup> *Idem.*

also found in early modern dictionaries.<sup>46</sup> This inwardness is expressed by terms referring to internal organs, most often the heart.<sup>47</sup> References to the heart in Egyptian texts are as old as Egyptian civilization itself. Breasted gives some examples from the fifteenth century B.C., a period in which, in his view, “the Egyptian had (...) begun to give the word ‘heart’ a meaning which made it more fully the equivalent of our word *conscience* than it had been in the Pyramid Age”.<sup>48</sup> A court herald stated about his services to the king:

“It was my heart which caused that I should do them, by its guidance of my affairs. It was...as an excellent witness. I did not disregard its speech, I feared to transgress its guidance. (...) ‘Lo,...’ said the people, ‘it is an oracle of God in every body. (...)’ (...).”<sup>49</sup>

But the guidance by the oracle is here directly related to material success, to a prosperous life; the people, for instance, also say: “Prosperous is he whom it has guided to the good way of achievement.”<sup>50</sup> Relatives of a dead prince pray:

“Mayest thou spend eternity in gladness of heart, in the favour of the god that is in thee.”<sup>51</sup>

A dead man declares, in a similar vein:

“The heart of a man is his own god, and my heart was satisfied with my deeds.”<sup>52</sup>

With regard to this idea of the heart as a god within man, Lichtheim refers to Bonnet’s *Realexikon der Ägyptischen Religionsgeschichte*.<sup>53</sup> Bonnet warns that we should not too lightly take the ‘god within man’ as synonymous with our word ‘conscience’. The religious idea of the god within man has much more connotations, is a much wider notion, than that of conscience. It does also have ethical connotations, though: “Der Gott, der aus dem Herzen redet, stellt auch vor sittliche Entscheidungen, und je und dann mag der Fromme

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<sup>46</sup> Mercer (1919), 89, does not hesitate to state that “[a]s time went on the individual’s relation to the gods became more and more a matter of heart and conscience”.

<sup>47</sup> For more on the metaphor of the heart, see (apart from the present section) chapter 2.2.

<sup>48</sup> Breasted (1933), 255.

<sup>49</sup> *Ibid.*, 254.

<sup>50</sup> *Idem.*

<sup>51</sup> *Idem.*

<sup>52</sup> *Ibid.*, 255.

<sup>53</sup> Lichtheim (1976), 162.



das Mahnen jener Stimme in hohem Ernste durchleben. Insofern umgreift die Vorstellung von dem G. i. M. [Gott im Menschen] auch den Bereich des Gewissens; aber sie fällt keineswegs mit ihm zusammen.”<sup>54</sup> Under the lemma ‘Gewissen’ [conscience], Bonnet issues similar warnings. The Egyptians did not have a separate word for ‘conscience’. “Es erscheint daher immer nur als eine Teilfunktion von Kräften und Erscheinungen, die ihrem Wesen nach viel weiter greifen. Wohl können sie auf den Bezirk des G. [Gewissens] zugespitzt werden. Aber diese Zuspitzung ist kaum je so eindeutig und so scharf, daß unser Begriff G. [Gewissen] eine adäquate Vorstellung ergäbe.”<sup>55</sup> He discusses the ‘interwovenness’ of ‘conscience’ and ‘heart’, but again warns that they are not the same. To say that the word ‘heart’ simply meant conscience would be to narrow it down to one aspect of its meaning.

Bonnet is certainly right to some extent, but his discussion of the topic is not entirely satisfactory. For one thing, it betrays that Bonnet subscribes to a rather narrowly defined concept of conscience, which opposes it to reason: in order to underscore the inadequacy of the translation of ‘heart’ with ‘conscience’, Bonnet says that “[i]m ganzen ist es für den Äg. [Ägypter] wohl überhaupt mehr der Verstand, der in den Fragen des praktischen wie des sittlichen Lebens den rechten Weg weist. ‘Ich bin ein Unwissender’, sagt ein Sünder, ‘der kein Herz (d. h. keinen Verstand) hat, der nicht weiß, was gut und böse ist’ (Erman, SPAW 1911, 1098).”<sup>56</sup> This immediately brings me to a second point: oddly enough, Bonnet translates ‘heart’ as ‘reason’ (‘Verstand’) here, whereas he had just stressed that the notion of heart included ‘the whole range of impulses’ that flow through it, and that from the heart stem all thoughts and feelings that determine human action.<sup>57</sup> Similarly, under the lemma ‘Herz’ [heart], Bonnet had stressed the affective component: “aus ihm [dem Herzen] quellen die Gefühle und Affekte, die den Menschen bewegen”.<sup>58</sup> Of reason Bonnet there says that ‘it is also the heart’s function’ – so ‘reason’ is certainly not the primary translation.<sup>59</sup> The many references to the heart in obviously moral contexts also seem to preclude the possibility that in those contexts, ‘reason’ would always be the proper translation.

It seems to me that it is good to be cautious in translating ‘heart’ as conscience – but then: that is not what I am trying to do. I am looking for the presence of something that we might call the *symbol* of conscience, and this does not rely on the fixed use of a single term. We may speak of the symbol of conscience when we find a certain grouping of expressions that

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<sup>54</sup> Bonnet (1952), 227.

<sup>55</sup> Ibid., 215.

<sup>56</sup> Ibid., 216.

<sup>57</sup> Idem.

<sup>58</sup> Ibid., 296.

<sup>59</sup> Ibid., 297.

are (in so far as we can infer from the context) connected to a certain class of experiences in a more or less stable manner. This is especially true since we are concerned with the *emergence* of the symbol.

Let us return to the use of the word 'heart', where it does not refer to a 'god within man'. Here is an example from the *Instruction of Amenemope*:

“Give your ears, hear the sayings,  
Give your heart to understand them;  
it profits to put them in your heart,  
Woe to him who neglects them!  
Let them rest in the casket of your belly,  
May they be bolted in your heart;  
When there rises a whirlwind of words,  
They'll be a mooring post for your tongue.”<sup>60</sup>

The importance of the heart, if it were not already clear from the numerous references to it, is expressed in these lines:

“The heart of man is a gift of god,  
Beware of neglecting it.”<sup>61</sup>

The following lines make us think of the difference between a quiet and a troubled conscience:

“Better is poverty in the hand of the god,  
Than wealth in the storehouse;  
Better is bread with a happy heart  
Than wealth with vexation.”<sup>62</sup>

Further on, this is expressed even more poignantly; guilt is presented as leading to physical distress:

“Do not covet a poor man's goods,  
Nor hunger for his bread;  
A poor man's goods are a block in the throat,  
It makes the gullet vomit.”<sup>63</sup>

The tenth chapter of the *Instruction of Amenemope* points to the importance of integrity, both privately and socially:

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<sup>60</sup> Lichtheim (1976), 149 (*Amenemope*, ch. 1). She uses various translations of the text.

<sup>61</sup> Ibid., 160 (*Amenemope*, ch. 24).

<sup>62</sup> Ibid., 152 (*Amenemope*, ch. 6). These lines are repeated in chapter 13, except for the first, which is replaced by “Better is praise with the love of men” (156).

<sup>63</sup> Ibid., 154-155 (*Amenemope*, ch. 11).

“Don’t force yourself to greet the heated man,  
For then you injure your own heart;  
Do not say ‘greetings’ to him falsely,  
While there is terror in your belly.  
Do not speak falsely to a man,  
The god abhors it;  
Do not sever your heart from your tongue,  
That all your strivings may succeed.  
You will be weighty before the others,  
And secure in the hand of the god.  
God hates the falsifier of words,  
He greatly abhors the dissembler.”<sup>64</sup>

In chapter sixteen, a comparison is made between the weighing done by man, and that done by the gods. People are warned not to cheat in weighing (grain, for instance, but perhaps also their own deeds), for another kind of weighing is in store for them:

“The Ape sits by the balance,  
His heart is in the plummet;  
Where is a god as great as Thoth,  
Who invented these things and made them?”<sup>65</sup>

By themselves, these lines may not seem to reveal much, but they are quite revealing if one realizes that they refer to the weighing of the hearts of the deceased in the Judgement Hall of Osiris. This ritual is elaborately depicted in the famous Book of the Dead, a compilation of older texts made at the beginning of the eighteenth dynasty (so in the New Kingdom, around 1500 BC). While Amen (Amen-Rā, or Amon, or Amon-Rā) was the greatest god in this world, Osiris was, as Budge writes, “King of the Other World, and Judge of the Dead, and the chief Ancestor-god of all Egypt.”<sup>66</sup> The Book of the Dead was intended “to help the deceased (...) reach the Kingdom of Osiris”. “Osiris,” Budge writes, “demanded much of the deceased before he admitted him into the abode of the blessed. The deceased had to prove to the Divine Magistrates, or Assessors, that he had led a good life upon earth, and to submit his actions being weighed in the Great Scales against Maāt, *i.e.*, the Truth (or, the Law). This weighing was performed with scrupulous care by Thoth and his deputy, in the presence of Osiris and the Great Company of the gods, and unless a man’s good deeds exactly counterbalanced Maāt, he was doomed to annihilation. (...) A man was responsible to his god, whether it was Rā or Osiris, for his deeds and words; on this fundamental fact the

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<sup>64</sup> Ibid., 154.

<sup>65</sup> Ibid., 156-157.

<sup>66</sup> Budge (1924), 30.

Egyptian conception of the Judgement of Souls was based.”<sup>67</sup> There are many drawings of this ritual, the earlier ones relatively simple, the later ones much more elaborate. The early pictures show the goddess Maât and the dog-headed Ape belonging to Thoth (the Ape in the passage from the *Instruction of Amenemope* quoted above) watching the weighing of the deceased person’s heart, in the presence of Osiris and, of course, the deceased. The heart is in the balance on one side of the Scales; a symbol of Maât on the other.<sup>68</sup> The deceased’s testimony of his own deeds (in the form of a ‘negative confession’: ‘I have not committed sins’, et cetera) was weighed against truth, his heart becoming heavier with every lie.<sup>69</sup> Descriptions in later papyri are also more elaborate; more onlookers and participants in the ceremony appear, among which is the soul of the deceased. Budge quotes from one text:

“In real truth (...) the heart of the Osiris (Ani) has been weighed. His soul stood up bearing witness on his behalf. His character is right according to the Great Scales.”<sup>70</sup>

Budge shows that this idea of judgement in Egyptian religion was much older than the Book of the Dead. He quotes from the *Teaching of King Khati*, which was probably, originally, from around 3000 B.C.:

“Make thyself able to justify thyself, or prove thy integrity, before God...”<sup>71</sup>

“God knows those who work for him...”

“If thou wilt oppress the widow [etc.] (...), thou wilt be judged and punished after death.”<sup>72</sup>

In a passage on the Judgement, we find the following phrase:

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<sup>67</sup> Idem. ‘Maât’ is the divine principle (and the god) of cosmic order and balance, and of truth. It is similar to the Stoic idea of natural law. Cf. Brunner (1983), 32; Mercer (1919), 90-91.

<sup>68</sup> See the pictures on *ibid.*, 31, 40-44, and plates VI and VII.

<sup>69</sup> Brunner (1983), 132-133. It is not completely clear to me from the literature whether it was only the deceased’s statement that was measured against the real record of his deeds in his heart, or whether the evil deeds recorded in the heart were themselves weighed against Maât. As the negative confession had a standardized form – it was not a personalized confession, but a standardized statement that one had not committed a long list of sins – it may come down to the same thing. See Budge on the ‘negative confession’ (33-39); he doubts whether it was originally intended to be in the Book of the Dead, and whether it was of native origin (37).

<sup>70</sup> Budge (1924), 43-44. The deceased was called ‘the Osiris’.

<sup>71</sup> *Ibid.*, 15.

<sup>72</sup> *Ibid.*, 16.

“It is a terrible thing for a man who knows [his sin] to be charged with it.”<sup>73</sup>

Although the belief in a judgement after death was very old, its only expressions are in this form. It never became the subject of analytical reflection; hence, to refer both to these texts and to the much later text of Amenemope does not vitiate the purpose of this section. Brunner remarks that the expressions and images essential to the movement of personal piety continued to exist until the end of Egyptian religion (appearing even in Greek temples), but that it is dubious whether they still expressed lively religious experiences. He does not doubt, however, that they did do so in the time of Ramses II and Ramses III, in the nineteenth dynasty (ca. 1307-1196 B.C.).<sup>74</sup>

It is the two elements of inwardness and judgement that we must retain for our analysis of the symbol of conscience. To return once more to the issue of the influence of Egypt on later cultures: it is with respect to the element of judgement that Brunner states the following: “Die bedeutendste religiöse Hinterlassenschaft Ägyptens aber ist ohne Frage der Gedanke des Totengerichts, besonders seine Instrumentation mit einer Waage; sowohl nach Griechenland wie nach Israel wandert der Gedanke an ein Gericht, das über die Lebensführung eines Menschen Rechenschaft fordert und dann entsprechend seinen Taten das Jenseitslos bestimmt. Das Christentum mag diese Vorstellung über das Judentum oder später (Petrus-Apokalypse) erhalten haben – die Herkunft noch der Bilder des Jüngsten Gerichts, oft mit der Waage, aus Ägypten ist nicht zweifelhaft.”<sup>75</sup>

Before I start with the analysis of the above passages, I will turn to another case (that of Socrates in Plato’s *Apology*), which may complement the Egyptian case in certain respects.

### 1.3.2. The apology of Socrates

A popular ‘early example’ of conscience in histories of the *concept* of conscience, is Sophocles’ play *Antigone*.<sup>76</sup> It is, however, also a much debated example. Antigone’s ‘appeal to conscience’ seems to be rather egocentric, in a way. It is dubious whether she provides a good example of the use of the symbol of conscience, rather than an example of strong feelings of sympathy, confined to her close relatives. Therefore, I prefer to present the (just as often mentioned) example of Socrates (469-399 B.C.), in order to point out the basic elements of the symbol of conscience. I will confine

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<sup>73</sup> Ibid., 18. The words between brackets are in Budge’s text.

<sup>74</sup> Brunner (1983), 117-118.

<sup>75</sup> Ibid., 150-151; he also refers to S.G.F. Brandon, *The Judgment of the Dead*, Weidenfeld & Nicolson, London, 1967.

<sup>76</sup> See, for example: Stelzenberger (1963b); Mock (1983), 1983; Vermeulen (1989).

myself here to Plato's presentation of Socrates' trial and defence, because of the clarity with which certain elements of the symbol of conscience show themselves. Xenophon (among others) offers a different version of Socrates' defence, and gives a different interpretation of his famous 'daimonion', Socrates 'superhuman thing', with which we are particularly concerned here.<sup>77</sup>

That there are different versions of the apology of Socrates makes us realize that we are not dealing with an historically accurate description of what happens, but with a piece of literature – a sample, as Gerd van Riel says, of “a literary genre that was quite successful in the early fourth century BCE”. “This Socratic literature never provides a neutral account of Socrates as a historical figure.”<sup>78</sup> So any expressions of conscience we might find are not spontaneous utterings made by Socrates; instead they are the words through which Plato makes Socrates speak. Nevertheless, they can still be expressions of conscience, stemming from (or at least mediated by) Plato's experience, and directed at an audience supposed to understand it, or at least some of it. While it is important to note that when I speak of 'Socrates' below, I mean Plato's Socrates, it is also worth noting that Plato seems to have endeavoured to do justice to Socrates' experience. Van Riel remarks: “[T]here is a difference between the way in which the Platonic Socrates is allowed to speak about his own *daimonion*, and the way in which the words *daimonios* and *daimon* are used [by Plato] in other contexts.”<sup>79</sup> A second point to make is that if one wishes to take Plato's *Apology* as a starting-point for a discussion of conscience, there are two routes one might take. The first focuses on Socrates' disobedience to the polis, on what we might call his conscientious objection. The second route takes one via Socrates' 'daimonion'. According to some authors, these routes converge; for others, they are one and the same, and yet others hold them to be separate routes altogether. Furthermore, many authors would dispute that one or both of these routes lead to conscience. Luc Brisson, for instance, categorically denies that the 'daimonion' has anything in common with what we tend to call conscience: “We therefore cannot consider that the signal perceived by Socrates might be equivalent to a form of moral conscience.”<sup>80</sup> This is his answer to Hadot, who wrote with regard to the 'daimonion': “Mystic experience or mythical image, it is hard to say; but in any case we can see in it a kind of figure of what would later be called the moral conscience.”<sup>81</sup> I am

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<sup>77</sup> Michael Stokes translates 'daimonion' as 'superhuman thing'. He explains why in Plato (1997), 7-8.

<sup>78</sup> Van Riel (2005), 31.

<sup>79</sup> *Ibid.*, 42.

<sup>80</sup> Brisson (2005), 6.

<sup>81</sup> *Idem*, note 16, quoted from P. Hadot, *What is Ancient Philosophy?*, M. Chase (transl.), Harvard University Press, Cambridge (MA), 2002.

no classicist, which means that I have to make do with translations and other people's comments on them, judging the plausibility of their interpretations in light of other interpretations, the strength of their arguments, consistency, the number of supporting assumptions required in order to make a point, and so on.<sup>82</sup> Overall, I can say that there are no conclusive reasons not to interpret parts of the *Apology* in terms of conscience, while there are several reasons to do so. So let us just see where both of the aforementioned routes take us.

### 1.3.2.1. *Socrates as a conscientious objector*

The *Apology* is concerned with Socrates' trial. Everything said, is said at the trial, and it is mostly Socrates that does the talking. Socrates is on trial, because he is said to be "an offender and a meddler, in studying things below the earth and in the sky, and making the weaker argument into the stronger and instructing other people in these same things", as Socrates himself repeats the accusation.<sup>83</sup> Both Plato's and Xenophon's version of the *Apology* make clear that Socrates is charged with corrupting the young of Athens, and with not recognising the gods of the city and introducing new superhuman beings instead.<sup>84</sup> Socrates sets out to defend himself by repudiating the various elements of the accusation one by one, while explaining that the more problematic accusations for him are not those made by Meletos and others during the trial, but older ones: the accusations made by many people over many years, the slander and the gossip that have given Socrates a bad name, and that have set people up against him.<sup>85</sup> He dismisses the various elements of the accusations for which he is on trial either by showing them to be inconsistent, or by pointing out their evident untruth or obvious implausibility. He also tries to explain himself and his behaviour – the behaviour that irritated many people so much – by revealing the underlying reasons and motivations. Socrates tells the men of Athens about Chairephoon, a young friend of his, who once asked the oracle in Delphi whether there was anyone wiser than Socrates. The Pythia answered that no one was wiser. Socrates could not understand this, and set out to investigate the wisdom of notoriously wise people, finding (to his surprise and disappointment) that they were invariably not as wise as they thought they were. By pointing this out to the people he questioned, Socrates made himself hated. He came to see it as his mission, however, to continue this

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<sup>82</sup> I have used the most recent specialized literature available, collected in *Socrates' Divine Sign* (see note 131); I found that Michael Stokes' fairly recent translation of the *Apology* (and of the crucial passages in particular) agrees very well with the literature.

<sup>83</sup> *Ap* 19b-c (Plato [1997], 45).

<sup>84</sup> *Ibid.*, 10 (introduction), *Ap* 23d, 24b-c (Plato [1997], 55).

<sup>85</sup> Meletos accuses him on behalf of the poets, Anytos represents the professionals, and Lycon the orators.

practice. The god (Apollo, most likely, given that the oracle in Delphi was devoted mainly to Apollo) used him as an instrument to show people that human wisdom amounts to nothing compared to that of the god. The god has made Socrates an example to the people, because Socrates at least has the wisdom of knowing that he knows nothing. So Socrates' actions are a matter of obedience and servitude to the god.<sup>86</sup> His mission is to occupy himself with philosophy, with self-examination and the examination of others. For Socrates, this is a matter of doing the right thing, of acting justly. To do what is right – in Socrates' case, to fulfil his god-given mission – is more important even than to stay alive:

“Someone may perhaps say: ‘Are you not really ashamed, Socrates, of having practised the kind of activity that puts your life now in danger?’ I should answer him, and justly too, like this: ‘Your suggestion is dishonourable, Sir, if you think a man who is the slightest use ought to take into account the risk of life or death, rather than to consider one thing alone in every action, whether the action is just or unjust, and the behaviour that of a good man or a bad. (...)’”<sup>87</sup>

Socrates explains that he owes obedience to the god before the Athenians – the kind of expression that would become a recurring motif in (early) Christian history:

“[I]f, then, you were to acquit me, as I said, on these conditions [‘that you don’t any longer spend your time on this inquiry nor do philosophy’], I should tell you: ‘I greet you, Athenians, with affection, but I shall obey the god rather than you, and so long as I am alive and capable I will *not* stop doing philosophy and advising you...’”<sup>88</sup>

He even argues that his obedience to the god is the best thing that ever happened to the polis. Socrates then answers the question that might arise, of why he never gave his service to the polis a more public form. At this point, Socrates' ‘daimonion’ enters the scene. Answering the question why

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<sup>86</sup> So Socrates is neither an atheist nor an agnostic. Gerd van Riel argues persuasively that atheism or agnosticism could not have been the reason behind Socrates' condemnation; nor could it have been his rationalisation of religion, because this was in line with a ‘general tendency of religious evolution in the fifth century’, and because no accusation of impiety that we know of from that time concerns rationalisation of the divine, unless it leads to atheism or agnosticism. Socrates “does not call into question the value of traditional religion as such”. The problem, Van Riel argues, was Socrates' internalisation and privatisation of the divine. (Van Riel [2005], 32-33, 35.)

<sup>87</sup> *Ap* 28b (Plato [1997], 65).

<sup>88</sup> *Ap* 29d (Plato [1997], 69); see also *Ap* 28e-29a.



he went around advising people all the time, but never went into politics, Socrates says:

“The reason for this is the thing you have often heard me talking about in various places: a thing divine and superhuman happens to me (...); I have had it ever since childhood, a certain voice which happens, and every time it happens it always turns me away from whatever I am about to do, but never turns me towards anything. This is what opposes my participation in politics, and very rightly I think it opposes it. (...) it is essential for a man who is in truth going to fight for what is just, if he is going to last for even a little time, to act personally rather than publicly.”<sup>89</sup>

Socrates then points out how dangerous political life is for such a man ‘who is in truth going to fight for what is just’. The only public office he ever held, was that of counsellor. While he held that office, the Athenians decided to sentence ten generals who had failed to pick up drowning men during a sea battle all at once, which was against the law, “as you all later thought”.<sup>90</sup> Socrates reminds his audience that he was the only one of the Prytaneis (presidents of the Council) who objected to and voted against this course of action. He thought he “ought rather to stand by the law and what was just than to side with you when you were making a decision that was not just, for fear of imprisonment or death”.<sup>91</sup> And this, Socrates says, was when the polis was still democratic. Later, when it had become an oligarchy, Socrates and four others were given the to his mind unjust order to bring in Leon the Salaminian to be killed. He disobeyed:

“...that time I showed again, not in word but in deed, that death concerns me (...) not at all, whereas doing nothing unjust or impious, that is my whole concern.”<sup>92</sup>

Had the regime not fallen shortly afterwards, Socrates might very well have been killed for his disobedience.<sup>93</sup>

After his speech, the jury pronounces the verdict: ‘guilty’. The accusers have demanded the death penalty. Socrates is allowed to speak again, and has the opportunity to propose an alternative to the death penalty. In the following speech, after he has made it plain that he is innocent and does not deserve punishment at all, he considers several options, among

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<sup>89</sup> *Ap* 31d (Plato [1997], 73). In Xenophon’s version, Socrates’ *daimonion* also urges him to do certain things, instead of just forbidding certain actions.

<sup>90</sup> *Ap* 32b (Plato [1997], 73).

<sup>91</sup> *Ap* 32b-c (Plato [1997], 75).

<sup>92</sup> *Ap* 32d (Plato [1997], 75).

<sup>93</sup> What Socrates is in fact explaining here, is that the polis was (and is) a ‘conscientious-objection-unfriendly’ context – see chapter 13.

which is that of exile. He states, however, that “to hold his tongue and lead a quiet life, in exile” is not an option, as it would be ‘disobedience to the god’.<sup>94</sup> This attitude Socrates has, of preferring his own idea of what is (un)just and of what constitutes obedience to the god to that of the polis or the majority, also returns in the *Crito*:

“Are we to fear and follow the multitude in such matters [‘what is just and unjust, honorable and shameful, good and evil’]? Or is it rather the opinion of one man, if he but have knowledge, which we must reverence and fear beyond all the rest?”<sup>95</sup>

“SOC. Crito, my dear and faithful friend, (...), [b]e assured that if you speak against the things I now think true, you will speak in vain. Still, if you suppose you can accomplish anything, please speak.

CRI. Socrates, I cannot speak.

SOC. Very well, Crito. Let us so act, since so the God leads.”<sup>96</sup>

Unless one were looking for an equivalent of the term ‘conscience’, there is little to distinguish Socrates from a modern conscientious objector. He wishes to do ‘nothing just or impious’, and to obey the god, rather than men. This leads him to make a stand for what he believes in, even if this means placing his own life at risk. This seems to me to be enough reason to say that conscience is an issue in Plato’s version of the *Apology*. But what about the ‘daimonion’?

### 1.3.2.2. Socrates’ ‘daimonion’

Socrates’ divine sign, (the one of/from) his ‘daimonion’, is often alluded to as a reference to conscience, similar to Christian references to ‘the voice of conscience’ (which is then taken to be the voice of God). The Catholic Encyclopedia is quite happy to do so: “His frequent references to a ‘divine voice’ that inspired him at critical moments in his career are, perhaps, best explained by saying that they are simply his peculiar way of speaking about the promptings of his own conscience.”<sup>97</sup> Stoker writes: “Das ‘warnende Gewissen’ sagt immer, was wir nicht tun sollen, nie was wir wohl tun sollen; – wer denkt hier nicht unwillkürlich an Sokrates’ *Daimonion*?”<sup>98</sup> Stelzenberger also mentions it in an enumeration of Greek and Roman expressions of and

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<sup>94</sup> *Ap* 37c-38a (Plato [1997], 85). In the following, Socrates states, famously, that “life without examination is not worth a man’s living”.

<sup>95</sup> *Crito* 47c-d (Plato [1984], 121-122).

<sup>96</sup> *Crito* 54d-e (Plato [1984], 129).

<sup>97</sup> See <http://www.newadvent.org/cathen/14119a.htm>. The term ‘inspired’ is not very appropriate, given the apotroptic (as opposed to protreptic) nature of the sign; that is, it always advised against things, but never gave positive advice.

<sup>98</sup> Stoker (1925), 206.

references to conscience.<sup>99</sup> I have already said that those who made a special study of Socrates' divine sign are divided upon the issue. There is disagreement about the origin of the sign, the nature of the sign, and the proper translation of the Greek to begin with. Furthermore, specialists argue about the consistency between Socrates' rationality and his obedience to the sign, about the (in)consistency between the *Apology* and other dialogues in this regard, about the (non-)exclusiveness of the sign, and so on. Some of these discussions are highly relevant for my purpose, so I will very briefly address a number of the above questions.

As to the translation of 'daimonion' and 'to daimonion': the discussion centres around the question whether we are dealing with an adjective or a substantivized adjective. Brisson argues that, even where 'daimonion' is preceded by 'to', we should not substantivize it, because 'to daimonion' should be taken as short for 'to daimonion sēmeion', i.e. 'the divine sign'.<sup>100</sup> Pierre Destrée holds the same view.<sup>101</sup> Many other authors do substantivize 'daimonion', and often leave it untranslated. However, they may still use it as synonymous with 'the divine sign', as Mark McPherran does.<sup>102</sup> Gerd van Riel is less clear about it; he speaks of 'the *daimonion*', but refers to it both as a voice, and as an internal force or even a god.<sup>103</sup> For my purpose, it does not matter too much whether we take the 'daimonion' to be a god or divine entity itself, or whether we view it as a divine sign. The important thing is that the word implies a certain degree of externalisation – something is 'said' or pointed out *to* Socrates; it is something that happens to him (something divine, supernatural, superhuman, or whatever).

Some authors argue that Socrates' divine sign comes from Apollo, the god who (presumably) gave Socrates his mission.<sup>104</sup> Others attempt to refute this idea. Van Riel, responding to two authors who believe the sign to come from Apollo, argues that "it is essential that Socrates himself never says that the voice that he hears is the voice of a god that comes from the outside. (...) [I]t is not Apollo who is responsible for the *daimonion*. It is rather a matter of the intervention of a *private* divine force that belongs to Socrates."<sup>105</sup> Had it come from Apollo, there would have been little reason to accuse Socrates of introducing new gods and of refusing to recognize the

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<sup>99</sup> Stelzenberger (1963b), 22.

<sup>100</sup> Brisson (2005), 2f.

<sup>101</sup> Destrée (2005), 64.

<sup>102</sup> McPherran (2005), 13-30.

<sup>103</sup> Van Riel (2005), 34-35, 41.

<sup>104</sup> So McPherran (2005), 16, 25 note 32. Brisson (2005), 4, says: "The signal could have been sent to Socrates by Apollo or by any other divinity of the traditional pantheon. If we limit ourselves to the texts considered here, we cannot say anything more." Brisson is at least convinced, then, that the source must be a traditional god.

<sup>105</sup> Van Riel (2005), 35.

gods of the city.<sup>106</sup> Mark Joyal remains in doubt: “[I]t is very hard to feel completely confident that we should reject the identification of *ho theos* with Apollo in this passage.”<sup>107</sup> Overall, it seems much more plausible to me that the ‘daimonion’ is in a special category; that it is not in the category of prophetic dreams and oracular revelations – things which Socrates believed in.<sup>108</sup> There is too much vagueness surrounding the ‘daimonion’ for it to be likely that the divine sign stems from Apollo; furthermore, there is something unsettling about it – hence the accusation of introducing new gods – and, finally, it is in practice (virtually) exclusive to Socrates in its appearance.<sup>109</sup>

Finally, it is important to look at interpretations of the nature of the sign. In this context, the relevant question is whether it is only concerned with ‘moral’ matters (in a broad sense of the term), or whether it warns Socrates in moral and non-moral matters alike. Brisson is adamant that the latter is the case; he enumerates a short list of passages and says: “In all these cases, the signal diverts Socrates from occupations to which no moral value is attached: instead, the moral value of these occupations depends on the interpretation Socrates gives to it after the fact. It is Socrates who, later on, will consider that it was better for him not to undertake the prohibited action. We therefore cannot consider that the signal perceived by Socrates might be equivalent to a form of moral conscience.”<sup>110</sup>

A number of issues have become entangled in this passage. First of all, if we want to know whether the ‘daimonion’ has anything to do with something we might call conscience, it is quite relevant how Socrates interpreted it. Rather than constituting evidence against an interpretation of the divine sign as a manifestation of conscience, a consistent interpretation of the sign as relating to moral matters on Socrates’ part constitutes evidence that the ‘daimonion’ should be taken as a symbolic expression of experiences of conscience. (Though, again, we are not dealing with spontaneous expressions on the part of the historical Socrates, but with expressions placed in the mouth of Plato’s literary Socrates.)

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<sup>106</sup> Ibid., 31-35.

<sup>107</sup> Joyal (2005), 109. He refers to *Ap* 40b2: ‘to tou theou sēmeion’ (the sign of/from the god).

<sup>108</sup> See McPherran (2005), 14.

<sup>109</sup> See Plato’s *Republic*, Book VI, 496c, as quoted in Destrée (2005), 65: “What about our own case (*to hemeteron*), the divine sign is hardly worth mentioning, either because it has never happened to anybody else or, perhaps has happened to somebody else in the past.” Note that the translation by G.M.A. Grube and C.D.C. Reeve is significantly different; Van Riel (2005), 42 (note 27), quotes from it: “Finally, my own case is hardly worth mentioning – my daemonic sign – because it has happened to no one before me, or to only a very few.”

<sup>110</sup> Brisson (2005), 6.

Secondly, there is a difference between actions that are good *for Socrates* and actions that are simply good. Otherwise put, actions that are beneficial to someone may not be morally good. Socrates would probably have argued that things that are morally bad cannot be beneficial, but that still leaves room for a difference between the beneficial and the good. What is beneficial may at least be morally neutral. I will come back to this later.

There is a third problem with the above passage; the claim that “the signal diverts Socrates from occupations to which no moral value is attached” is partly untrue, and partly disputable. Roslyn Weiss’ interpretation of the same passages is very illuminating in this respect. Brisson asks: “From what action does the divine signal divert Socrates?” He first mentions a passage from the *Apology*, but I will come to that shortly. Brisson continues: “In the *Euthydemus* (272e) and in the *Phaedrus* (242d), it stops him from getting up and leaving.”<sup>111</sup> This makes the sign sound rather ridiculous. Why would it simply stop Socrates from getting up and leaving? (It makes sense that Socrates would ask the same thing.) Weiss points out, which Brisson does not, that the *Euthydemus* is a comedy. Hence, “[t]he *Euthydemus* passage seems to put a comic spin on the *daimonion*, a comic turn quite in place in a comic dialogue. There is nothing of moral import or even of danger – nothing that could even remotely be called ‘bad’ – in Socrates’ leaving the dressing room.”<sup>112</sup> Given that the *Euthydemus* is a comedy, we should turn to the other passages.

For Brisson, the *Euthydemus* and the *Phaedrus* provide examples of the same thing. But does he do justice to the passage in the *Phaedrus* by describing it the way he does? According to Weiss, the passage has a moral-religious meaning, and she considers it to offer “still stronger support for my thesis that the *daimonion* does not oppose Socrates’ views but warns him when *he* is about to oppose them.” The reason for this is that the *Phaedrus* tells us what happened before the appearance of the ‘daimonion’, and hence

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<sup>111</sup> Idem.

<sup>112</sup> Weiss (2005), 89. Note that Weiss does distinguish between two meanings of ‘bad’ (we might say ‘morally bad’ and ‘harmful’), in the same way I distinguished between ‘morally good’ and ‘beneficial’. In a footnote Weiss points out, for those who insist on a serious interpretation of the ‘daimonion’ in this passage, that “my thesis can still fairly easily accommodate it” – this thesis being that Socrates’ divine sign is a ‘warning bell’ that makes itself heard whenever Socrates is about to (or intends to) do something which goes against his own better judgement, which contradicts Socrates’ own deeply held convictions, or, in yet other words, which conflicts with what Socrates’ most deeply cares about. In this case, the sign could be said to prevent Socrates from leaving, because that would conflict with Socrates’ deep concern with philosophy – for had he left, he would not have had the chance to talk with the two ‘eristical clowns’ Dionysodoros and Euthydemus.

“affords us a glimpse of where Socrates stands irrespective of the sounding of his *daimonion*.”<sup>113</sup> This is how the appearance of the sign is described:

“My friend, just when I was about to cross the river, the familiar divine sign came to me which, whenever it occurs, holds me back from something I am about to do. I thought I heard a kind of voice at this very moment...”<sup>114</sup>

The voice forbids Socrates to leave the place where he is standing, and thereby to cross the river, as he was about to do, until he had atoned for an offence against the gods. Now, Weiss draws attention to what follows, regarding what precedes the event of the above passage:

“In fact, the soul too, my friend, is itself a sort of seer; that’s why, almost from the beginning of my speech, I was disturbed by a very uneasy feeling, as Ibycus puts it, that ‘for offending the gods I am honored by men’. But now I understand exactly what my offense has been.”<sup>115</sup>

Weiss comments: “We see from this passage that well before the sign forbids his movement, indeed almost from the beginning of his speech, Socrates feels uneasy, sensing that he might be offending the gods. It is Socrates’ soul that is the ‘seer’, catching the first glimpse of the wrongness of his action. What the *daimonion* does is make audible to Socrates what his soul intuitively grasps, so that his soul’s quiet warning does not go unheeded. (...) [T]he *daimonion* acts upon Socrates’ own feeling that he has done something wrong that needs to be rectified; it amplifies, then, his own doubts about what he is about to do. Although the sign is experienced by Socrates as adventitious, it in fact comes not from without but from within.”<sup>116</sup> Most significant for my

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<sup>113</sup> Weiss (2005), 90.

<sup>114</sup> *Phdr* 242b8ff, quoted in Joyal (2005), 107; this translation is virtually the same as the one by Nehamas and Woodruff (1995) that Weiss uses (see the next note), except that they translate ‘a voice’ instead of ‘a kind of voice’ (see Joyal [2005], 103).

<sup>115</sup> *Phdr* 242c6-d2, quoted in Weiss (2005), 90.

<sup>116</sup> Weiss (2005), 90. It is worth noting that the translation ‘almost from the beginning of my speech’ is not unproblematic; the translations of this passage differ widely – Weiss’ general point remains valid, however. Her position is close to that of Vlastos, who is criticized by Brickhouse and Smith for being a reductionist, that is: for seeking “to reduce the *daimonion* to other, more recognizably rational, experiences.” (Brickhouse and Smith [2005], 44.) They quote Vlastos: “Socrates has a ‘hunch’ – a strong intuitive impression – that a certain belief or action is correct without being able to articulate his grounds for it at the moment.” (Quoted from G. Vlastos, *Socrates: Ironist and Moral Philosopher*, Cambridge University Press, Cambridge, 283.) Brickhouse and Smith argue that what the ‘daimonion’ does is “force Socrates to attend to his intuitive sense”, and they insist on the separateness of the ‘daimonion’ and the ‘rational intuition’ – they cannot be identified, “as the reductionist account requires” (Brickhouse and Smith [2005], 48). I am not sure

purpose here is that we find that the context in which the ‘daimonion’ appeared was not at all devoid of moral-religious significance; instead, Socrates’ moral-religious convictions were at stake. Brisson’s superficial interpretation must be rejected.

What does Brisson say about the *Theaetetus* passage? According to Brisson, the ‘daimonion’ “prevents [Socrates] from seeing again some of his disciples who left him some time ago”.<sup>117</sup> Again, there seems to be little of moral import in the event. Weiss says: “In the *Theaetetus*, it is certainly likely that Socrates has his own sense of which of his former pupils are unworthy of renewed exposure to his maieutic art, and that his *daimonion* merely concretizes his own reservations about these students, stopping him from readmitting them against his better judgment.”<sup>118</sup> Again, Weiss is first of all eager to defend her thesis, but in doing so she points to what is important for us, namely, that something ‘moral’ is at stake right enough. The relevant passage in the *Theaetetus* reads as follows:

(Socrates has just explained his ‘midwifery’, and said that “the many fine ideas and offspring that they [his ‘pupils’] produce come from within themselves. But the god and I are responsible for the delivery.”)

“There is clear evidence of this. Often in the past people have not been aware of the part I play: they have discounted me, and thought that they themselves were responsible for the delivery. (...) [T]hey left me sooner than they ought to. Then, because they kept bad company, they proceeded to have only miscarriages, and they spoiled all the offspring I had delivered with wrong upbringing. (...) Eventually, they gained a reputation for stupidity, and thought themselves stupid too. (...) If they come back, begging and doing goodness knows what for my company, sometimes the supernatural sign that I get does not allow me to let them be with me, but in some cases it does, and these are the ones who make progress again.”<sup>119</sup>

For Socrates, the ‘midwifery sessions’ are of the utmost importance; they are part and parcel of his philosophical mission, which means that they are part of what constitutes ‘doing the right thing’ for Socrates. So Weiss’

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whether Weiss’ account would also be reductionist in their view, but I think her position is the most sensible one: the appearance of the ‘daimonion’ is related to Socrates’ own convictions, and warns him when he is about to act against him, at moments when he is, for some reason or another, momentarily unaware of it, or unable to articulate what is wrong. In the latter case, the sign forces him to obtain clarity before acting.

<sup>117</sup> Brisson (2005), 6.

<sup>118</sup> Weiss (2005), 90. ‘Maieutic’ refers to the Socratic method of ‘midwifery’; Socrates, in conversations, is like a midwife in delivering other person’s ‘babies’, that is: insights.

<sup>119</sup> *Tht* 150d-151a (Plato [1987], 28).

interpretation is certainly not implausible, and Brisson's interpretation at least disputable.

Yet this passage draws attention to an aspect of Socrates' 'morality' that is largely disregarded by all the authors mentioned in this paragraph: it comprises much more than what we would call 'morality' – in fact, the word is too narrow to be really applicable to Socrates' view of the good. The passage from the *Apology* quoted in 1.8.2.1 might still justify Weiss' statement that "what a *daimonion* does is prevent the just man from doing unjust things by alerting him to their injustice", but when Socrates, being convicted, explains the meaning of what has happened to him, her interpretation is no longer adequate:

“...my customary prophecy (the one from my superhuman thing) used previously all the time to be very frequent, and oppose me in very slight matters, if ever I was about to do anything wrong. But on this occasion there have happened to me what you see for yourselves, the very things which a person would think, and they are thought, to be the ultimate harm. But the god's sign neither opposed my leaving the house at dawn nor my climb up here to the court (...). (...) [A]t no point in this business has it opposed any action or word of mine. (...) [P]robably this which has happened to me is for the good, and we cannot be right who suppose that death is a bad thing. I have had strong evidence of this: it would have been impossible for my usual sign not to oppose me if I had not been about to do something good for me.”<sup>120</sup>

It is tempting to focus on Socrates' (that is, Plato's) references to justice ('doing nothing unjust or impious', et cetera) in the *Apology*, and in this passage on the phrase 'if ever I was about to do something wrong', and to take 'wrong' to mean 'morally wrong', but that would be a simplification. Weiss chooses to interpret the non-manifestation of the sign on the occasion of Socrates' trial exclusively morally: "Just as the *daimonion* really could only have been triggered by the prospect of Socrates' engaging in the dirty business of politics rather than by the badness of the untimely death he might incur as a result, so surely was it pacified not by the goodness of Socrates' impending death but by the just way in which Socrates conducted himself at his trial."<sup>121</sup> This is a mistake. Socrates' last reference to the 'daimonion' shows it to have a double or mixed nature: on the one hand it prevents Socrates from doing what is unjust, impious, morally wrong; on the other it prevents Socrates from incurring harm.<sup>122</sup> In this last passage, the

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<sup>120</sup> *Ap* 40a2-c2 (Plato [1997], 91).

<sup>121</sup> Weiss (2005), 83.

<sup>122</sup> I will leave undiscussed here the logical problem that not to be about to do something harmful is not the same thing as being about to do something beneficial, as Socrates seems to hold. Cf. Brisson (2005), 8; Weiss (2005), 83-84.



emphasis is clearly on the prevention of harmful consequences. The ‘something good *for me*’ in the last sentence precludes any (plausible) moral reading. In fact, the passage from the *Phaedrus* also seems to connect what is morally good with what has good (beneficial) consequences: the pupils which Socrates’ sign allows him to take back “are the ones who make progress again”.<sup>123</sup>

In my view, there is a parallel between the function of Socrates’ ‘daimonion’ and the ambiguity of goodness in the *Apology* on the one hand, and the meaning of ‘eudaimonia’ as we find it (for instance) in Aristotle. In Book I.viii of the *Nicomachean Ethics*, Aristotle says that “it seems clear that happiness needs the addition of external goods”, after which he names a number of them, such as wealth, friends, political influence, and personal beauty. He concludes the paragraph thus:

“So, as we said, happiness [‘eudaimonia’] seems to require this sort of prosperity too; which is why some identify it with good fortune, although others identify it with virtue.”<sup>124</sup>

‘Eudaimonia’, here translated as ‘happiness’, though many prefer other translations, like ‘(human) flourishing’, depends on virtue, but also on luck – something to which Martha Nussbaum (among others) has drawn attention.<sup>125</sup> This should not surprise us, really, given that ‘eudaimonia’ is a metaphor, depending on the literal meaning of (having) a ‘good (guardian) spirit’. So the term may take us two ways: 1) ‘eudaimonia’ may be seen as intrinsically connected with virtuousness, as is the case for Aristotle – this may perhaps be linked to the literal meaning of ‘eudaimonia’ via an association of a guardian spirit with a good moral guide; 2) ‘eudaimonia’ may mean that one has a good guardian spirit that takes good care of one, making sure that nothing is wanting. So ‘eudaimonia’ refers to virtue as well as to luck in external circumstances. Similarly, while I do not wish to imply that Socrates’ daimonion should simply be seen as a guardian spirit, we do see that the ‘daimonion’ prevents Socrates from doing wrong, as well as preventing that something bad happens to him. The moral and the non-moral are not fully differentiated; hence, Socrates’ ‘daimonion’ cannot be a moral conscience in a narrow sense. Nevertheless, it relates to what Socrates *should* do, in a broader sense – to a right order of things. As such, it can symbolize conscience.

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<sup>123</sup> Of course, we would still say that there is a strong connection between what is beneficial and what is morally right, in the sense that some action’s being beneficial provides a moral reason for doing it, but that is not the issue here.

<sup>124</sup> Aristotle (1985), 80.

<sup>125</sup> Nussbaum (1995). For the meaning of ‘eudaimonia’, see especially 365.

### 1.3.3. An emerging symbol

What I have presented in the previous two subsections provides adequate and enough material for an analysis of the symbol of conscience in terms of its core elements, as I will give in the following section. But it may be useful to recapitulate what I have done here, and what I mean by ‘the emergence of the symbol’. I have explained (in the introductions to this book and the present chapter) why I wish to see conscience as a symbol; it is a means of getting at the experiences underlying the enormous variety of expressions associated with conscience, and a way to discover an underlying unity. With Voegelin, I have explained why an analysis of the symbol must proceed from its early (yet not too early) beginnings; this is where the symbol has a level of articulation that allows us to distil the various elements of meaning of which it is made up, without being ‘spoiled’ by too much reflection, and without having lost its close connection to the engendering experiences. I have chosen two key texts: the Egyptian *Wisdom (or Instruction) of Amenemope* and Plato’s *Apology*. Whatever historical connections there may be between Egyptian and Greek thought, these texts must not be taken to represent two successive phases in the emergence of the symbol of conscience. It is enough that they represent two relatively independent moments of emergence, two points of ‘break-through’ of the symbol of conscience. Some core elements of the symbol of conscience, as we will see, show up more clearly in the one, and others more clearly in the other. Another reason why it is valuable to have these two texts as ‘raw material’ instead of just one is that it shows that the symbol of conscience may turn up in very different places, at very different times; hence, that conscience is primarily something human, and not something unique to one particular culture and period, as some people are wont to think.

The emerging symbol of conscience, neither in the Egyptian case nor in that of Socrates, consists of a single expression. Only later, as we will see in the next chapter, do single terms function as (more or less) the complete symbol. ‘Heart’ is a key term in the Egyptian example, of course, but whether we are dealing with a symbolization of conscience or not depends very much on the context. Context is also important in Socrates’ case, but here, too, there are some key symbolic expressions: ‘daimonion’ and related terms. The term ‘daimonion’ can be seen as symbolic here, because its use is surrounded by too much vagueness to be an indicative term. Socrates does not simply refer to something that is well-known and recognizable. Hence, he uses expressions like ‘a certain voice which happens to me’ (in the *Apology*), and in the *Phaedrus* ‘a kind of voice’. Mark Joyal comments on both passages, pointing out that the Greek phrase used is ‘phōnē tis’: “I submit that what the Platonic Socrates lay claim to experiencing was not ‘a voice’ in the literal sense that we might think of it, but ‘a kind of voice’ or ‘a voice, as it were’, so that *tis* here, as often, is being used to apologize for or to soften a metaphor. (...) Socrates is even more

diffident in the *Phaedrus* than he is in the *Apology*: *edoxa ... akousai*, ‘I thought I heard a kind of voice’.<sup>126</sup> The suggestion that Socrates is using symbolic language gains further strength from the plausibility of the hypothesis that when he speaks of ‘the sign of the god’ he is not referring to any particular (known) god; the expression is then seen as ‘conveying indeterminacy’, and “lack of precision is something that we constantly find in Plato’s Socrates”.<sup>127</sup> It is also a characteristic of symbolic language.

#### 1.4. CORE ELEMENTS OF THE SYMBOL OF CONSCIENCE

In the two examples presented in the previous section, a number of elements can be distinguished, that form the core of the symbol of conscience. They are elements on the level of symbolization, but with a connection to the experiential level. These elements recur time and again (together or separately) in equivalent symbolizations, and also, as we shall see in the next chapter, in more doctrinal formulations regarding conscience. I distinguish between three core elements of the symbol of conscience: 1) the element of ultimate concern; 2) the element of intimacy; 3) the element of the witness. Below, I will discuss each of them in turn.<sup>128</sup> These elements, of which the first is the most important – it can never be absent in symbolic expressions of conscience – constitute the more or less stable structure or framework of the symbol of conscience wherever and whenever it occurs. Within this framework, many things are variable: the exact expressions used, the exact quality of underlying experiences, what triggers experiences of conscience and what occasions appeal to the symbol. But the semi-formal, semi-substantial framework constituted by the above elements is what legitimates the language of equivalences with regard to experiences and symbolizations of conscience.

##### 1.4.1. The element of ultimate concern

The term ‘ultimate concern’, as I have said, comes from Tillich, who described faith as ‘the state of being ultimately concerned’. Ultimate concern has two aspects: that of being ultimately concerned, and that of having a concern for the ultimate. In a religious person, these ought to be two sides of the same coin, and I suppose they inevitably are, as soon as one has an ultimate concern. But the aspects can be expressed separately and differently. The relation to an ultimate, an absolute, is expressed by means of symbols of ultimacy. ‘God’ is the most obvious example, and we encounter it both in the Egyptian case and with Socrates. The Egyptian texts speak of the god, or of the gods in their various manifestations, of the Great Scales, and of the heart

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<sup>126</sup> Joyal (2005), 107.

<sup>127</sup> Ibid., 109.

<sup>128</sup> On these elements, see also chapters 13, 14 and 15.

of a man as his own god. Socrates speaks of his ‘daimonion’, his divine or superhuman thing, as well as of the god. Such expressions convey an awareness of a moral-religious standard, other than and superior to one’s own or that of the community.<sup>129</sup> More precisely, they convey an awareness of two possibilities: that one’s own moral standard *needs* to be corrected, and that one may participate in knowledge of a higher order – that is, that one *can* indeed correct one’s standard. We might call the superior standard a transcendent standard, but it need not be transcendent in the sense of referring to something outside of this world. Later expressions of conscience are often immanentized, in the sense that the superior standard is not felt to be otherworldly, but comes, for example, from within oneself. It is then still transcendent, but only in the sense that it still relates to an ultimate. In fact, the Egyptian idea of the ‘oracle of god in every body’, of the ‘god in the heart’, is also at least a semi-immanentized symbolization of conscience.

An awareness of a superior standard entails a corresponding awareness that one’s own (human) standards fall short of perfection. The Egyptian texts cited are replete with expressions of such an awareness; it is most explicit in the ‘insufficiency’ or ‘failure’ of man referred to in the *Wisdom of Amenemope*. Humility was the characteristic attitude of the pious in the movement of personal piety.<sup>130</sup> Brunner emphasizes that it was in this period, too, that the awareness of sin became a ‘tangible’ element in Egyptian faith, even if confessions of concrete sins remained scarce.<sup>131</sup> Socrates, for all his self-confidence, expresses his awareness of his ‘falling short’ throughout the *Apology*, counting his own wisdom (and human wisdom in general) for nothing, compared to that of the god. In fact, his self-confidence (bordering on arrogance) is based on his awareness of his own insufficiency, on his knowing that he knows nothing – this awareness is the only thing that makes him superior to the men of Athens.<sup>132</sup>

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<sup>129</sup> Both ‘moral’ and ‘religious’ should be taken in a broad sense. As a rough approximation, we might say that the first concerns the right order of things, right behaviour, explicitly moral virtues, but also a virtue like openness, and so on, while the second concerns the practice of faith, acting in accordance with one’s faith, varying from adopting a certain attitude (towards others) to observing religious rituals and prescripts (praying so many times a day, et cetera).

<sup>130</sup> Brunner (1983), chapter 5: ‘Persönliche Frömmigkeit’, in particular 104 and 108–111.

<sup>131</sup> *Ibid.*, 46, 108, and chapter 5 in general.

<sup>132</sup> In this regard it is interesting to note the meaning of the Greek term ‘hamartia’, usually translated as ‘error (of judgement)’ or (in a moral-religious context) as ‘sin’. Originally, this term, stemming from ‘hamartanein’ (‘to miss the mark’), was applied to archers who missed the mark – their arrow flying wide or falling short. Later, the term begot the general connotations of error and sin, especially related to one’s own qualities. Hence, there is a connection between ‘hamartia’ and ‘hubris’.

Something that is quite prominent in Egyptian texts, but less so in the *Apology*, is the aspect of judgement. In the *Wisdom of Amenemope*, as in many other Egyptian texts, the judgement of the dead, where it is not explicitly referred to, is a constant presence in the background. It is the strongest way in which the Egyptians expressed their awareness of ‘falling short’, of ‘sin’ – an awareness that led them to use magic formulas in order to leave Osiris’ Judgement Hall unscathed. We will see in later chapters that the idea of judgement is a recurring theme in expressions of and reflections on conscience.

The second aspect of ultimate concern draws attention to the concern itself, rather than the object of concern. Socrates does this repeatedly, as when he says that “death concerns me (...) not at all, whereas doing nothing unjust or impious, that is my whole concern”. Socrates points out that his concern with justice and piety is so great, that he has risked his life for it. He also relates it to a god-given mission – there can be no doubt that it is a matter of ultimate concern to Socrates. In the Egyptian texts, this aspect of ultimate concern shows up in the form of fear (“I feared to transgress its guidance”) and that of happiness (the ‘happy heart’; “Mayest thou spend eternity in gladness of heart”), but it is less prominent than the first aspect. The texts do intend to stimulate the emotional strength of the concern, especially in the form of fear, by drawing attention to the impending Judgement.

#### *1.4.1.1. Authority and inspiration: two guises of the element of ultimate concern*

Apart from having the two aspects explained above, the element of ultimate concern tends to come in one of two guises, though they are not mutually exclusive, and hence may occur at the same time. These are the elements of authority and inspiration. The terms are intended to draw attention to the way in which ultimate concern is experienced. ‘Authority’ draws attention to the object-side of the experience, while ‘inspiration’ places the subject in focus. In the latter case, the concern proceeds outward from the subject towards the world; in the former, the experience is one of an imperative coming towards you, a command being addressed to you. The terms ‘authority’ and ‘inspiration’, then, represent two experienced directions, or two *loci* of initiative – yet they are different ways of experiencing essentially the same thing.<sup>133</sup>

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<sup>133</sup> In his Freudian/Frommian interpretation of morality, Richard Wollheim speaks of the growth of the moral sense as a transition ‘from voices to values’ that is somewhat analogous to my distinction between the elements of authority and inspiration. He also speaks of a shift from super-ego to ego-ideal; the former is concerned with obligation, the second with value. He attaches guilt to the neglect of obligation, and shame to the failure to live up to the ego-ideal. Wollheim takes obligation and value to have fundamentally different sources, the one deriving from introjection, the other from projection. As a psychological-genetic explanation of

Someone might object that the term ‘inspiration’ also implies a reference to something external, in a sense, something that does not coincide with the subject – a source of inspiration. That is true, even if that source is someone’s ‘true self’, as certain modern expressions would have it. So we should say that, phenomenologically speaking, there is always a double movement: first the movement from a source of authority or inspiration to a ‘listening’ subject, and then the movement from that subject to the world, in which the authoritative command or the inspiration received is translated into action. In the case of authority the centre of gravity lies in the first movement; in the case of inspiration the first movement is, in a manner of speaking, merely a spark (‘the spark of conscience’, or *scintilla conscientiae*), while the energy is released in the world.<sup>134</sup>

#### 1.4.2. The element of intimacy

There is a close connection between the element of intimacy and that of ultimate concern. Central to the symbol of conscience is that a very strong personal involvement is expressed. This corresponds with the insistent quality of the experience of conscience. What Tillich calls an ‘ultimate concern’ is almost literally expressed by Socrates: “doing nothing unjust or impious, *that* is my whole concern”. The element of intimacy is close to the second aspect of ultimate concern, but there is more to it. It draws attention not just to the strength of the concern, but rather to the intimate connection of an experience of conscience with the individual concerned (or the concerned individual). When this intimate connection is missing, it may also be doubted whether the element of ultimate concern is really there, and hence whether we are really dealing with an expression of conscience. An example of this is given in chapter 13. The element of intimacy pertains to the way a person is related to the reasons he puts forward, the convictions he expresses, and so on; they must be expressions *of* his person, not merely expressions used *by* him.

I have said that conscience (indicatively speaking) is one of the terms “denoting the area where the process of reality becomes luminous to itself”. In view of the element of intimacy, this statement ought to be qualified such as to say that it is *that* part of the process of reality that concerns *myself*, or involves me, or for which *I am to a certain degree responsible* that comes to light, that enters into my awareness. It does not necessarily have to be a responsibility for something I have already done; it might also be that I feel a responsibility to do something. For instance, when I see a beggar on the

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morality, this is quite interesting. It does not, however, diminish the unity of both in being guises of the element of ultimate concern. See Wollheim (1986), chapter 7, especially 216-220.

<sup>134</sup> More about the elements of authority and inspiration will follow in 1.5, where the ‘subsymbol’ of the voice of conscience is discussed.

street, 'my conscience' may persuade me to give the poor man or woman something, because what happens is that certain facts are highlighted in my consciousness: the fact that there is a beggar, in need of money to buy food, and the fact that I have money and can afford to give something away, to name the two most important facts. The symbol of conscience is engendered by such an experience of reality, in which *one's own* past or possible contribution to reality is highlighted, in view of a (moral/religious) standard that is experienced as absolute – evoking ultimate concern.

So the element of intimacy draws attention to the necessary connection to experiences of conscience and the experiencing subject, as well as to the intimate nature of that connection; they are *that* person's experiences in a much stronger way than ordinary experiences. With recent authors on conscience one can say that a person's identity is at stake.

#### *1.4.2.1. Secrecy and privacy: two guises of the element of intimacy*

Like the element of ultimate concern, the element of intimacy often comes in one of two guises: that of secrecy or that of privacy. The latter, often entailing the experience of conscience as being of a very personal, often emotional nature, is more regularly and more clearly present in modern symbolizations and other expressions of conscience than in premodern ones. It would be a mistake to read in ancient uses of the term 'heart' simply the same connotations of intimacy we now attach to the word – these were present, but certainly did not exhaust the meaning of the word. In ancient Egypt, the word had both cognitive and noncognitive connotations. In the Old Testament, the word often expressed a more emotional aspect of conscience. This does not diminish the fact that references to the heart (or other internal organs) do suggest intimacy, a link with the core of the personality – but that intimacy need not have the association with private feelings, as the term does now. 'Privacy', in a less loaded sense, however, may simply mean that something does not concern anyone beside oneself. In that form, we see expressions of it in the Egyptian texts, as well as with Socrates. An impression of it is conveyed in the *Wisdom of Amenemope* by the use of the term 'heart' and by speaking of the 'god within' (which as an expression is quite similar to Adam Smith's more secular 'man within'). We will see that this inwardness, or interiority, is stressed by St. Augustine, and much later by the Protestants that fall back on certain aspects of his thought. Socrates' 'daimonion' is certainly private, in the sense that no one else hears it, and because it concerns Socrates' actions, and no one else's.

Privacy and secrecy are not opposites, of course, and they may lie close together. What is private is what you do not want any Tom, Dick and Harry to know – hence, it is to a certain extent secret, it is a closed area to all but a privileged few, if anyone. Note that 'secretus' also meant 'secluded' or 'separated or closed off from...', which brings it very close to 'private'. But the term 'privacy' does not have the strong associations with feelings of guilt

and fear that ‘secrecy’ has; moreover, while privacy is usually evaluated as something positive, secrecy is something that tends to be frowned upon.

In premodern times, the element of intimacy turns up quite regularly in the form of secrecy. C.S. Lewis’ remarked that ‘consciring’ was often close to ‘conspiring’: “Since secrets often are, and are always suspected of being, guilty secrets, the normal implications of *consciens* and *conscientia* are bad.”<sup>135</sup> In the motto to this chapter, we see Hobbes remarking on a metaphoric use of the term ‘conscience’ “for the knowledge of [one’s] own secret facts, and secret thoughts”. More recently, the element of secrecy has receded into the background. Neither in the *Wisdom of Amenemope* nor in the *Apology* does the element of secrecy occur clearly; for this form of the element of intimacy they were not the best sources. It is not strange that we do not see it in the *Apology*, for it belongs primarily to the guilty conscience, which Socrates obviously does not have. As to the *Wisdom of Amenemope* (and other Egyptian texts), one reason why we do not find expressions of secrecy is that what could give rise to such experiences was so secret that it could not be expressed. In a sense, the secrecy is complete, because there is no expression and therefore no confession of secrecy. The Egyptian ‘magical’ strategy was to plead innocence in the knowledge of guilt, and to do so in such a ritualized way that the will of the gods would be swayed in one’s favour. A central characteristic of the movement of personal piety (when magic was less in vogue) was trust in the mercy of the god(s). This trust did not usually lead to confession of one’s sins; these remained secret (though not in a heavy-hearted way – the Egyptians, for all their preoccupation with the afterlife, are never said to have been a downcast and downhearted people). Another possible explanation lies in the strong awareness of what gave rise to a third element of the symbol of conscience: the experience that there is a witness for all one’s thoughts and deeds. It made no sense for the Egyptians to speak of secrecy, when all would be revealed anyway in the weighing of the heart. This seems rather inconsistent with the first explanation, but on the other hand, it might be that here, too, the Egyptian trusted in the power of magical persuasion to make his heart or any other possible witness speak nothing against him. Budge quotes from the *Book of the Dead*:

“Let no one stand up to testify against me, let none of the Tchatchaut (...) thrust me back, and do not thou (*i.e.*, his heart) turn aside from me in the presence of the Guardian of the Scales.”<sup>136</sup>

Also from the *Book of the Dead* is the following line:

“God has hidden Himself; [He] knows the dispositions [of men].”<sup>137</sup>

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<sup>135</sup> Lewis (1991), 185.

<sup>136</sup> Budge (1924), 19.



But here it is God that is ‘secret’, and it is clearly pointless to try to keep anything secret from him.

### 1.4.3. The element of the witness

In Adam Smith’s *The Theory of Moral Sentiments*, conscience is closely allied to self-command, and with respect to this he states that “this control of our passive feelings must be acquired (...) from that great discipline which Nature has established for the acquisition of this and every other virtue; a regard to the sentiments of the real or supposed spectator of our conduct.”<sup>138</sup> He then sets out to sketch the development of conscience – ‘the impartial spectator’ is one of the names Smith uses for it – from early childhood to adulthood in a way that anticipates twentieth-century developmental psychology. It is suggested by both that the development of conscience entails a transition from Smith’s ‘real spectator’ to the ‘supposed spectator’ – but supposed or not, a spectator remains. The experience that there is a spectator who witnesses all one’s actions – and, even worse, thoughts – is an important part of the phenomenology of conscience. Hence, it need not surprise us that we find expressions of such an experience in the Egyptian texts of the previous section.

In one place, a man compared his heart to ‘an excellent witness’. In many passages from different texts, the presence of a witness is suggested, whether it be god, the heart, or a god in the heart. The heart records a man’s deeds; that is why it is weighed against Maāt in the Judgement Hall. In that context it was said in one text that “[h]is soul stood up bearing witness on his behalf’. In Socrates’ case, we find no explicit mention (in the passages quoted) of a witness of his actions or thoughts. Yet it is clear that there was such a witness. Socrates’ ‘daimonion’ ‘opposes him whenever he is about to do something wrong’. It always knows what is going to happen, and what Socrates’ intends to do. We get the image of a permanent onlooker that remains in the background as long as things go right, but who steps in as soon as things are about to take a turn for the worse (both morally and in terms of possible harm for Socrates).

More interestingly, we find in Socrates’ case something we did not really see in the Egyptian texts, namely that Socrates is his own witness. Reflexivity and reflectivity are defining characteristics of Socrates. He functions as a witness both to himself and to others; a witness of their lack of wisdom. Even though Socrates claims to know nothing but that he knows nothing himself, it is clear that he has strong ideas about what is just, as well as, emphatically, about what is unjust, and unacceptable. Hence, he is in the habit of examining himself and his behaviour in light of those ideas. The

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<sup>137</sup> Ibid., 20.

<sup>138</sup> Smith (1982b), 145 (III.3.21).

'daimonion' can be seen as an experientially externalized manifestation of this habit, at times when Socrates, for one reason or another, does not succeed in being his own witness, in connecting what he is about to do with his more deeply held convictions.

The symbol of conscience, then, is also engendered by the experience that someone (either God oneself, or another person) bears witness to one's actions, so that they cannot simply be forgotten, but have to be accounted for.<sup>139</sup> We will see that it is a persistent element both in symbolizations and in doctrines of conscience. It often acquires the status of an independent subsymbol. C.S. Lewis, in his analysis of the meaning of 'syneidesis' and 'conscientia', distinguishes between an 'external witness' and an 'internal witness'. The former refers to the situation in which one shares (secret) knowledge with another person – the 'consciring', which was close to 'conspiring'. Where 'syneidesis' or 'conscientia' express the experience of an internal witness, one conscires with oneself. Smith's 'impartial spectator', or 'great inmate of the breast' takes an intermediary position between the two. In general, we can say that the external witness gradually gave way to its internal counterpart, even if Hobbes still insisted on the correctness of the first interpretation of 'conscious' and 'conscience'. His 'later' metaphorical use of the term in the 'rhetorical' phrase: 'conscience is a thousand witnesses' is actually not so late at all – Lewis traces it back to Quintilian: 'conscientia mille testes'.<sup>140</sup>

### 1.5 SOME IMAGINATIVE SYMBOLS

The symbol of conscience is not one symbol, in the sense that one single symbolic expression exhausts it, though some symbolic expressions unite all or most of the core elements that I identified in themselves. Rather, there is a certain class of experiences with a corresponding class of symbolizations, and we can speak of 'the symbol of conscience' whenever there is a conjunction between a member of the first class and one of the second. This section is concerned with two imaginative symbols, two members of the class of symbolizations that gained a strong measure of independence (not unlike the independence in use that the element of the witness often acquires), and which for that reason we might call subsymbols of conscience. The symbols of the 'worm of conscience' and the (divine) 'voice of

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<sup>139</sup> See Lehmann (1963), 329.

<sup>140</sup> Lewis (1991), 190; Quintilian (2006), Book V, xi, 41 (Marcus Fabius Quintilianus, ca. AD 35-95); it is perhaps possible that Hobbes is referring to the *Quinti Horatii Flacci Emblemata*, published in Antwerp, 1612, where a number of passages from various authors are collected under the heading 'conscientia mille testes' – not, I should add, the passage by Quintilian. For these *Emblemata*, see <http://emblems.let.uu.nl/emblems/html/va1612026.html>. On the saying 'conscientia mille testes' see Otto (1971), N421.

conscience' persisted alongside theories and doctrines of conscience. Sometimes, they became elements of doctrine themselves. It is worth while looking at these imaginative symbols, because they illustrate something of the wealth of symbolic expressions of conscience. There are other examples than the two I have chosen to discuss; Heinz Kittsteiner draws attention to the connection between 'Gewitter' (thunder and lightning) and 'Gewissen' (conscience). Thunder could be seen as a sign of (some)one's sinfulness, and, theologians desired, should be followed by penance.<sup>141</sup> Kittsteiner points out that Hell has also been made to symbolize conscience, and vice versa – and we will see a bit of hell below.<sup>142</sup> Many other symbols relate to the court(room); so we find the judge, the accuser, the prosecutor, the lawgiver, and, of course, the witness. Another important reason to look at such symbols is that they also appealed to 'common' people, to the illiterate. That does not mean that thunder and the worm of conscience are simply folk symbolizations of conscience; they were actively used by theologians, by members of the intellectual elite, to discipline people.

### 1.5.1. The worm of conscience

The 'worm of conscience' is the kind of symbol we call a 'metaphor', which means that the bearer of the symbol is not just interesting because of what it conveys, but is intrinsically interesting. The term '*worm* (of conscience)' immediately calls forth a large number of images and associations, which have been judged fit by many philosophers and theologians to be connected with the notion of conscience. It may be said that we are dealing here, not just with a metaphor, but with an *allegory*, as conscience seems to be personified in a worm. Sometimes, the term 'worm of conscience' indeed seems to have been used allegorically. There have even been plays in which a Worm of Conscience appeared.<sup>143</sup> For my purpose, it is not relevant whether or when we are dealing with an allegory, especially since allegory is of a 'thoroughgoing metaphorical nature'.<sup>144</sup> What *is* important, is that the metaphor has been in use since Origen, who was born around 185 AD, up to the twentieth century. Nietzsche, for example, speaks of the worm of

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<sup>141</sup> Kittsteiner (1995), 151-156.

<sup>142</sup> *Ibid.*, 116-156.

<sup>143</sup> In the Corpus Christi plays of Coventry, in particular the Doomsday play of the Drapers' Guild in 1561, two characters called the 'Worms of Conscience' occurred. They may have been the inspiration for Shakespeare's use of the metaphor in *Richard III*, where Margaret of Anjou expresses the wish that "The worm of conscience still begnaw thy [Richard's] soul" (William Shakespeare, *King Richard III*, 1.3.222, Arden edition, ed. Antony Hammond, Methuen, London, 1981). This suggestion is made by Irvin Leigh Matus in Matus (1989), 196-197. The Shakespeare quotation also stems from this article. There is also a play called "Worm of Conscience", by Ludwig Anzengruber (1839-1889).

<sup>144</sup> Tuve (1966), 220.

conscience in *The Antichrist*.<sup>145</sup> In between, the metaphor is used by people like Augustine, Thomas Aquinas, Geoffrey Chaucer (in the *Canterbury Tales*) and John Calvin, and in the twentieth century it occurs in James Joyce's *Portrait of the Artist as a Young Man* (1916).<sup>146</sup>

The metaphor was introduced into philosophical thought by Origen (ca. 185 AD-between 250 and 255 AD), who relates the story of manna from Exodus to a remark from Isaiah. It says in Exodus that the unfaithful saved manna for later, "and worms came forth in abundance from it and it rotted".<sup>147</sup> Origen asks:

"How 'do worms come forth in abundance'? Hear what the judgment of the prophet is about sinners and these who love the present world: 'Their worm,' he says, 'will not die and their fire will not be extinguished.' (...) But someone says, 'If you say that the word of God is manna, how does it produce worms?' The worms in us come from no other source than from the word of God. For he himself says, 'If I had not come and spoken to them they would not have sin.' If anyone, therefore, sins after the word of God has been received, the word itself becomes a worm in him which always pricks his conscience and gnaws at the hidden things of his heart."<sup>148</sup>

It is interesting to see that the worm stands both for the torment of sinners who have disobeyed God's law, and for God's law itself. The phrase 'their fire will not be extinguished' is very similar to the formula of 'synderesis', 'the spark of conscience which was not even extinguished in the breast of Cain', and these two kinds of fire are indeed intermingled in patristic (and later) literature.<sup>149</sup> In Calvin's work too, it is emphasized that conscience

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<sup>145</sup> Nietzsche (1969), 192 (§ 25) asks: "*Was ist jüdische, was ist christliche Moral? Der Zufall um seine Unschuld gebracht; das Unglück mit dem Begriff 'Sünde' beschmutzt; das Wohlbefinden als Gefahr, als 'Versuchung'; das physiologische Übelbefinden mit dem Gewissens-Wurm vergiftet...*"

<sup>146</sup> See Thrane (1960). Joyce's 'source' must have been *Hell Opened to Christians*, the English translation of a seventeenth century tract by the Jesuit Pinamonti.

<sup>147</sup> Exodus 16:20, quoted in: Origen (1981), 310. R. A. Greene mistakenly supposes that Augustine "was responsible for the tradition of interpreting Isaiah's worm to be the worm of conscience" (Greene [1991], 202).

<sup>148</sup> Idem. The 'worm that shall not die' is that of the sinner (in hell: Mark 9: 47-49). Isaiah 66:24 says, in full: "And they will go out and look upon the dead bodies of those who rebelled against me. Their worm will not die, nor will their fire be quenched, and they will be loathsome to all mankind." (Unless otherwise stated, Bible references are to the *Bible, New International Version*, International Bible Society, 1984).

<sup>149</sup> See Stelzenberger (1959), 52, especially note 25, and Stelzenberger (1963b), 82-83. Greene reports the same phenomenon. He mentions, for example, John Minsheu, author of a linguistic guide, who described 'synteresis' as both 'the remorse or prick

cannot be completely extinguished, which can be taken in two ways: there remains an element of purity in man, or man can never hide from conscience, nor destroy it. The same double meaning is illustrated by Calvin's speaking of conscience as harassing the sinner *and* being harassed *by* the sinner.

That the worm of conscience represents both the divine law and the consequence of transgressing it, is not as strange as it may seem. We have seen that the symbol of conscience conveys an awareness of a superior moral-religious standard. What the symbol of the worm of conscience emphasises, is that this awareness is often a painful awareness, as the experience usually occurs *after* a transgression of this standard – after a sin has been committed. The worm of conscience, 'sharper than any cauterizing iron, gnaws away within'.<sup>150</sup> This is a way of describing the feelings of guilt by which we recognize the functioning of conscience. The symbol of the worm of conscience emphasizes the *affective* side of the experiences that engendered the symbol of conscience, a side that is implicated by the core elements of the symbol, more specifically by the fact that the experiences must be described in terms of a *concerned* awareness – and I might add that concern turns to worry here.<sup>151</sup>

The worm is not the favourite animal of many people. It is a 'low' creature, literally. It crawls and wriggles through the earth and, more importantly, through corpses. The worm is associated with decay. It is also associated with sickness – people in medieval times will have had experience with worms living in their bodies; probably more than we have. In Guillaume Deguileville's *Pèlerinage de l'Âme* (1355-1358), 'synderesis' was personified "as a fantastic, human-headed bodiless creature with a worm's tail".<sup>152</sup> So, when the image of this creature is invoked to symbolize (an element of) conscience, it cannot be the nicest part of conscience to which it pertains. Guilt, remorse, 'pangs' of conscience, etcetera, are the experiences that engendered the symbol of the worm of conscience. The worm of conscience was seen as a torment, and came to be mentioned among other

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of conscience, that parte of the soule which opposeth it selfe against sin' and 'the pure part of conscience' (Greene [1991], 206; see also 201-202). In scholastic thought, 'synderesis' was the counterpart of 'conscientia'; see chapter 3.

<sup>150</sup> Bosco (1986), 345 (the quotation is from Calvin's *Institutes*).

<sup>151</sup> In some places, it is not so much the torment on which the focus lies, but the element of bearing witness and testifying, as in Elizabeth Grymeston's *Miscellanea: Prayers, Meditations, Memoratives* (1604): "What harm the head doth think and the hand effect, that will the worm of conscience betray" (Michael Roberts [ed.], *Elizabethan Prose*, Jonathan Cape, London, 1933, 87, quoted in Nist [1984]).

<sup>152</sup> Greene (1991), 202.

‘bitter things, such as tears’ and ‘sadness’.<sup>153</sup> Alfred L. Kellogg mentions a theological compendium by Albert the Great that would have been known to Chaucer, in which it is said that the effect of sin “creates of man Hell, for within the sinner is the flame of avarice, the stench of lechery, the shadows of ignorance, the worm of conscience, the thirst of concupiscence” – the worm of conscience finds himself not in the best company, to be sure.<sup>154</sup>

But symbols may also be *used*. It seems likely that the Catholic Church, as well as people like Calvin, could make use of a frightening symbol like that of the worm, in ‘restraining’ people. Lewis notes: “Even in ancient times (...) a ‘bad conscience’ (...) was associated with fear; fear of possible detection and punishment by men, or of punishment by the gods whose detection was certain.” He goes on to say that the “Christian doctrine of certain judgement and (highly probable) damnation naturally linked *conscience* and fear even more tightly together. (...) When this process is complete, the word *conscience* itself may come to mean simply ‘fear of hell.’”<sup>155</sup> Through literary examples, Lewis shows how conscience develops from a ‘driver into an abyss of fears’, via something which has punishment, rather than sin, as its content, to a synonym of fear for future (afterlife) suffering – hence Shakespeare’s “conscience (...) makes a man a coward” (from *Richard III*).<sup>156</sup> But conscience as fear appears in Isaiah too: “O Lord, why hast thou made us to err from thy ways and hardened our heart from thy fear.”<sup>157</sup> Therefore, I suggest that the perseverance of the symbol through the ages has a basis both in ordinary experience and in its utility.

### 1.5.2. The voice of conscience

We have seen that Origen identifies *word* and *worm*. He also quotes John 15:22: “If I had not come and spoken to them they would not have sin.”<sup>158</sup> In Origen’s work, therefore, we find a connection between the symbol of the worm and that of the voice. The symbol of the voice of conscience is older than that of the worm; we have seen it occur in the *Wisdom of Amenemope* and in Plato’s *Apology*. In the *Wisdom of Amenemope*, we find: “I did not disregard its speech...”, and Socrates repeatedly speaks of a (kind of) voice ‘happening to him’, in connection with a superhuman thing that also ‘happens to him’. So the experience is one of being spoken to, or called upon, though it is not

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<sup>153</sup> St. Ignatius of Loyola, *The Spiritual Exercises of Saint Ignatius of Loyola*, W.H. Longridge (transl.), London, 1919, 67, cited in Lawrence (1965). (Ignatius of Loyola lived from A.D. 1491-1556.)

<sup>154</sup> *Compendium Theologicae Veritatis*, translated from *Beati Alberti Magni Opera*, XIII, 56 (Lyons, 1651) in Kellogg (1951), 469.

<sup>155</sup> Lewis (1991), 205.

<sup>156</sup> *Ibid.*, 205-208.

<sup>157</sup> Isaiah 63:17; quoted from the King James Version by Reinhold Niebuhr in Niebuhr (1946), 141.

<sup>158</sup> Origen (1982), 310.

a normal voice; it cannot be heard by others. That was probably why Plato's Socrates used this phrase 'happening to him' (but we might also say 'occurring'), instead of merely saying that he *heard* a voice – it is not literally a voice, but 'voice' is an adequate symbol; there simply are no words to *describe* the phenomenon, so one has to try to *evoke* the appropriate effect symbolically. Because the experience is somehow *like* that of hearing a voice, this is the word that is used. It is a way of expressing the insistent quality of the experiences conveyed by the symbol of conscience: the 'voice' is within Socrates, and it is a compelling voice.

The Bible also affords ample inspiration for the symbolization of conscience as a (divine) voice.<sup>159</sup> I mentioned Isaiah just now, but the 'hardened hearts' appear in Psalms as well, in connection with God's voice: "Today, if you hear his voice, do not harden your hearts as you did at Meribah..."<sup>160</sup> Another passage that may have suggested the symbolism of the voice to refer to conscience to theologians and philosophers is Deuteronomy 4:36: "From heaven he made you hear his voice to discipline you". Augustine spoke of the voice of conscience in his *City of God*.<sup>161</sup> In scholastic discussions of conscience and synderesis, the latter was said to 'murmur at evil' or 'murmur back at sin'.<sup>162</sup> An interesting eighteenth century example of the use of the metaphor is afforded by Henry Home, Lord Kames, who writes:

[C]onscience, or the moral sense, is none of our principles of action, but their guide and director. It is still of greater importance to observe, that the authority of conscience does not consist merely in an act of reflection. It arises from a direct perception, which we have upon presenting the object, without the intervention of any sort of reflection. And the authority lies in this circumstance, that we perceive the action to be our duty, and what we are indispensably bound to perform. It is in this manner that the moral sense, with regard to some actions, plainly bears upon it the marks of

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<sup>159</sup> There are several passages in the Bible in which God's voice is said to be like thunder, or to be accompanied by it, so that the symbols of the voice and thunder are combined. There is also a passage that may have given rise to both the symbolism of the voice and that of the worm: "...the people of Tyre and Sidon (...) sought an audience with him. (...) [T]hey asked for peace (...). On the appointed day Herod, wearing his royal robes, sat on his throne and delivered a public address to the people. They shouted, 'This is the voice of god, not of a man.' Immediately, because Herod did not give praise to God, an angel of the Lord struck him down, and he was eaten by worms and died" (Acts 12:20-23).

<sup>160</sup> Psalms 95:7-8.

<sup>161</sup> Augustine (1890), book 12, chapter 8.

<sup>162</sup> See, for example, Thomas Aquinas, *Summa Theologica*, Part I, Question 79, Article 12, and Potts (1980), 101 (where the phrase 'murmurs back in answer to sin' can be found in a translation of Philip the Chancellor's *Summa de Bono [Treatise on Conscience]* from about 1230 A.D.).

authority over all our appetites and passions. It is the voice of God within us which commands our strictest obedience, just as much as when his will is declared by express revelation.”<sup>163</sup>

This is an interesting passage, because it draws attention to some of the main characteristics of the experience that engendered the symbol of the voice of conscience (or of conscience as the voice of God – or nature, for that matter, as in Rousseau’s case). The symbol of the voice draws attention to the *authority* of conscience, and to the *immediateness* of the experience – it is not after ample deliberation that conscience arrives at a conclusion and dictates what to do; in almost any situation, we will immediately perceive ‘what conscience commands’.

David Velleman, in his article “The Voice of Conscience”, wonders how one recognizes the voice of one’s conscience. He says that it cannot be by what it talks about, for if that were the case, we would not have to think of it as a distinctive voice. He goes on to say that ‘conscience does not literally speak’; “The idea of its addressing you in a voice is thus an image (...).”<sup>164</sup> The image “must represent something significant” about the dictates of conscience, “or it wouldn’t be used to identify them as a distinctive mode of thought”. His suggestion is that dictates of conscience carry a special authority, and that hence “the voice of conscience is, metaphorically speaking, the voice of this authority”.<sup>165</sup> According to Velleman, the metaphor of the voice of conscience “symbolizes a fundamental feature of morality”.<sup>166</sup> Velleman goes on to connect the voice of conscience to Kant’s Categorical Imperative, but for my purpose it is not necessary to fill it in so precisely. What is most interesting is Velleman’s remark that the metaphor of the voice symbolizes a fundamental feature of morality. This is in line with what we have said before, when discussing the core elements of the symbol of conscience. One of them was that the symbol is an expression of ultimate concern. This, we have seen, often manifests itself in one of two guises: that of authority or that of inspiration. It is because morality is a matter of ultimate concern, because one is ultimately concerned about it, that the voice of conscience can ‘speak’ with such authority – but the authority is experienced as something external, in a way; it comes towards one.

Velleman connects the metaphor of the voice exclusively to the authority of conscience. I would agree that the metaphor of the voice is peculiarly suited to express this element, but it can also be an inspirational voice. To speak of inspiration, or of ultimate concern in general, sounds

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<sup>163</sup> Home (1976), Essay II, Chapter III, 45.

<sup>164</sup> Recall that the voice (or kind of voice) of Socrates’ ‘daimonion’ did not really speak either; it was decried as ‘phōnē (tis)’, not ‘logos’.

<sup>165</sup> Velleman (1999), 57-76.

<sup>166</sup> Idem.



more positive than the terminology of authority, but this experience of authority is not something other than ultimate concern: in reality we often need to be rebuked by conscience to remind us of our ultimate concern – and this is only possible because we *have* this ultimate concern. Sometimes – quite often actually – we simply have to be reminded of this special quality, this fundamental feature of morality expressed in the metaphor of the voice of conscience, that we might also call its *overridingness*, to borrow a term from Hare (and use it in a way that he would not approve of). But the voice of conscience need not be experienced as a rebuke or a warning reminder; it may be an empowering and supporting voice, a voice of purity – the voice of one’s authentic self, or the voice of Nature in Romantic thought.

The voice of conscience is an element both on the level of symbolization, and on the experiential level. I have touched on this point at the beginning of this section, with regard to Socrates. The symbol of the voice expresses the insistent quality of the experience of conscience. It also expresses the transcendent quality of that experience, in the sense that the voice comes from beyond oneself; there is an experienced externality. At the same time, it draws attention to the element of intimacy, to one’s personal involvement: *you* are called upon. The simultaneous distance and intimacy that are typical for the experience of conscience come together in the symbol of the voice.

In the aspect of being addressed, a voice being directed at you, the metaphorical character of the symbol of the voice becomes most pronounced, as this aspect leans on the intrinsic meaning and interest of the (carrier of the) symbol. The aspect of being personally addressed is very clearly illustrated by the use Martin Heidegger makes of the symbol of the voice. Without going into the details of his conception of conscience, or addressing the obvious question whether ‘conscience’ is a moral concept or symbol in Heidegger’s philosophy, we can say something about the role of the voice of conscience in *Sein und Zeit*. For Heidegger, conscience is what constitutes the subject as an individual. It has the character of a ‘call’.<sup>167</sup> It individuates, in that it calls upon you to step out of your situation of ‘lostness’ or ‘fallenness’ (*Verfallenheit*) in ‘the They’ (*das Man*). It is a call towards authenticity, a ‘true’ (*eigentlich*) existence; a call towards one’s authentic self, which people find hard to answer, because it is also a call towards the unknown, the strange, *das Unheimische*. This makes it a very personal, individual thing; the individual sets himself off against the others, *das Man*. However, to be able to respond to the call of conscience, of authenticity, one must first be able to hear it – one has to be a *responsible* person beforehand. This might be interpreted as Heidegger’s variant of the

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<sup>167</sup> As John C. Staten puts it: “The voice of conscience (...) is a call to Care” (Care = *Sorge*, in Heidegger’s terms); see Staten (1988), 67. About Heidegger’s description of conscience, see Staten, chapter 3, and Kukla (2002), 1-34.

‘synderesis’, or ‘that spark of conscience which was not even extinguished in the breast of Cain’.

With this example we have leaped into the twentieth century, to one of that century’s most important thinkers, for whom conscience was obviously still a significant reality. We have also jumped over centuries of thought, often critical thought, on conscience. These will be the subject of the following chapter.



## 2. Between symbol and doctrine (1): the conceptualization of conscience until the early Middle Ages

“Nihil prodest inclusam esse conscientiam; patemus Deo”  
LUCIUS ANNAEUS SENECA, *Fragments*, 24.

### 2.1. INTRODUCTION

While the purpose of the previous chapter, for all its references to history, was basically metahistorical, the present chapter and the following four are concerned with historical developments. The first chapter was metahistorical, because it concerned the symbol of conscience as a framework with a strong stability over time, within which variable but equivalent symbolizations as expressions of variable but equivalent experiences can be placed. This symbol of conscience is historical, in the sense that it appears at certain times and places in history, in societies at a certain stage of development; but it is metahistorical in the sense that it is elicited by experiences that are not historically and culturally unique (within historical time), but *human*.<sup>1</sup> These experiences occur whenever certain characteristics of the human animal interact with certain social circumstances. Darwin was certainly on the right track in this regard.<sup>2</sup> The symbol of conscience is metahistorical in the same sense (even if to a lesser degree) as the symbol of God.

In this and the four ensuing chapters, which all belong together (as the titles show), I will be concerned with historical development within (the framework of) the symbol of conscience; that is, with changing experiences and symbolizations. My ‘focus’ is on (approximately) the last two millennia of European history. Secondly, but for a large part, I will be concerned with theories, doctrines, and concepts of conscience; with their genesis and historical development. The main purpose of these chapters is to show that there is a direct relation between the transition from the level of symbolization to that of doctrine and concepts on the one hand, and a

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<sup>1</sup> Cf. Seel (1953), 297-298: “Mir scheint, hier wird ein humanes Kontinuum, etwas strukturell nicht Hinwegdenkbares, gefaßt; die Leistung der griechischen Geistesgeschichte von Homer bis Platon besteht nicht darin, all dies aus dem Nichts entdeckt und geschaffen, sondern es nach und nach, und zumeist viel früher als man wahrhaben will, durch gestaltende Aussage ins Bewußtsein gerückt zu haben.”

<sup>2</sup> According to Darwin, “any animal (...) endowed with well-marked social instincts (...) would inevitably acquire a moral sense or conscience, as soon as its intellectual powers had become as well, or nearly as well developed, as in man”; “Ultimately our moral sense or conscience becomes a highly complex sentiment – originating in the social instincts, largely guided by the approbation of our fellow-men, ruled by reason, self-interest, and in later times by deep religious feelings, and confirmed by instruction and habit.” (Darwin [1922], 150 and 203.)

subsequent criticism and rejection of conscience on the other. The discussion of this matter builds on the section on loss of meaning in the previous chapter. Symbolizations do not all make way for theories, doctrines and concepts; some remain, while others make way for new symbolizations. I will attend to these (remaining) old and (appearing) new symbolizations as well.

One of the underlying purposes of the whole of part I of this book is to provide a means of interpreting both the phenomenon of conscience, its various expressions, and the multifarious theoretical reflections on conscience that have accumulated over the centuries. Chapters 2 to 6 are crucial for an understanding of the present situation, by which I mean the simultaneous *rejection* of conscience by many philosophers, psychologists, and other scientists, and *recognition* of conscience by others, who each seem to recognize a different conscience. The ‘history’ of symbolizations and conceptualizations of conscience presented in this and the following chapters has been written with a view both to the modern – not necessarily recent – dismissal of conscience as a meaningful notion, and to the modern spread of diverse concepts of conscience. The interpretation of the ‘history of conscience’ given here is written for the purpose of rendering understandable the modern rejection of conscience *and* its multifarious recognition; this purpose largely determined what I chose to draw attention to and what I decided to leave out. The chapters ‘between symbol and doctrine’ taken as a whole, then, while dealing in large part with the development and expansion of symbolizations and conceptualizations of conscience, build up (twice – once for the seventeenth and once for the nineteenth century) towards the critique of conscience and the reactions to that.

The present chapter deals with the phenomena of and the development from compactness to differentiation – the terms were briefly mentioned in the previous chapter – until the early Middle Ages. Chapter three takes up the thread of this development with the distinction between ‘conscientia’ and ‘synderesis’. It also introduces the idea of the development from symbol to doctrine, a development which (from the standpoint of the late Middle Ages) is traced in retrospect, and also prospectively, until the seventeenth century.<sup>3</sup> Chapter 4 presents the first wave of criticism, in the figures of Hobbes and Locke. The next chapter deals with the re-emergence of conscience in Enlightenment and Romantic thought, and chapter 6 with the second wave of criticism, that of the nineteenth century. Bentham, Darwin, and Freud are among the people discussed here. Of course, this is

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<sup>3</sup> Hence, ‘conceptualization’ in the title of the present chapter has a double meaning; it refers not only to the way in which concepts of conscience were formed, but also to an increasingly conceptual (as opposed to symbolic) understanding of conscience – so to an historical development.

not by far a complete ‘history of conscience’; there can be no such thing. That it is also not a straightforward ‘history of ideas’ should be clear by now, but insofar as it resembles such a thing, it has no ambitions of comprehensiveness. What I wish to do is to draw attention to certain trends in history, viewed from a certain perspective, focusing on some key points in the European history of expressions of and reflection on conscience. For the most part, this does not entail new interpretations of well-known thinkers, but rather a somewhat different pattern in which they are placed – assuming that these things are not completely synonymous. I have tried not merely to extract some lines about conscience from the work of each thinker, but to do justice to the thought of each one (within limits, of course), and to place it in its historical context (where possible both intellectual *and* non-intellectual). At the same time I have tried to point out the many continuing threads, the lines of influence, the recurring themes, so that there should indeed be enough unity to the following chapters.

## 2.2. FROM COMPACTNESS TO DIFFERENTIATION (1)

I have touched upon the topic of compactness and differentiation in 1.8. Before I can speak of a development in experiences and symbolizations from compactness to differentiation, I will have to say more about the meaning of these terms.

### 2.2.1. ‘Compactness’ and ‘differentiation’

Voegelin connects ‘compactness’ with myth, and ‘differentiation’ with history and philosophy. The compact experience of the cosmos finds expression in myth. In this experience, nor in its expression, do we find distinctions that we take for granted, like that between the natural and the supernatural, the immanent and the transcendent; these terms simply do not apply.<sup>4</sup> Such distinctions arise in the process of differentiation. Historical linguistics suggests that there is a relation between the compactness of language and the compactness of experience and symbolization that Voegelin is concerned with. For a better understanding of compactness and differentiation, then, I will turn to the historical study of language.

In *Poetic Diction*, Owen Barfield discusses the idea that language starts “with simple, purely perceptual meanings”, and develops by metaphor to include supposedly abstract (“complex psychic”) meanings.<sup>5</sup> Proponents of this idea, the further they go back in the history of language, see it “becoming more and more *figurative* with every step”, and yet they have “no hesitation in assuming a period – still further back – when it was not

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<sup>4</sup> Cf. Voegelin (2004d), 188-189.

<sup>5</sup> Barfield (1962), 65 and 69. This idea was once widely shared; Barfield mentions Anatole France, Hugh Blair, and Max Müller, but also John Locke.

figurative at all”.<sup>6</sup> They combine two hypotheses. One is the ‘root’ hypothesis, which states that “every language started with a group of monosyllabic sounds, each of which expressed a simple, general notion. These general notions (...) were then applied to particular phenomena, among which they were subdivided by the addition of other words; and these latter words finally became the prefixes, suffixes, inflexions, etc. (...)”.<sup>7</sup> This hypothesis is combined with the hypothesis, or theory, of metaphor: the idea that language grows more and more poetic as it is traced back into the past.<sup>8</sup> With regard to the ‘root’ hypothesis, Barfield cites Otto Jespersen, who argued that languages develop from being inflexional to being isolating, instead of the other way around: “The evolution of language shows a progressive tendency from inseparable irregular conglomerations to freely and regularly combinable short elements.”<sup>9</sup> Language did not start with monosyllables with general meanings; nor did it start out with only words with ‘physical meanings’, which were then, in a ‘metaphorical period’ applied to psychic phenomena. Hence, the ‘metaphor’ hypothesis is wrong as well.

Barfield’s solution to the problem is that languages start out with meanings of a *concrete* type; but the meaning of ‘concrete’ is not that a word referred to something ‘material’: “It is just those meanings which attempt to be most exclusively material (‘sensuel’), which are also the most generalized and abstract – i.e. remote from reality.”<sup>10</sup> He takes the English word ‘cut’ as an example: “Its reference is perfectly material; yet its meaning is at the same time more general and less particular, more abstract and less concrete, than some single word which should comprise in itself – let us say – all that we have to express to-day by the sentence: ‘I cut this flesh with joy in order to sacrifice’. If it is impossible to cut a pound of flesh without spilling blood, it

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<sup>6</sup> Ibid., 73.

<sup>7</sup> Ibid., 77 and 81. This is part of the Romantic theory of language propounded by August von Schlegel, Wilhelm von Humboldt and August Schleicher, the latter of whom elaborated Schlegel’s distinction between isolating, agglutinating and inflexional languages. (Humboldt included a fourth type: incorporating languages.) According to Schleicher, languages developed from isolating, through agglutinating, to inflexional. Inflexional languages, like Latin and the modern European languages, were held to be ‘organic’, and superior to the other kinds, which because of their simple structure were unable to convey complex thought. English is inflexional, but has been moving towards being isolating. In isolating languages, each morpheme (basic unit of meaning) is usually one word; to go from singular to plural requires another morpheme, and thereby another word. Agglutinating languages attach morphemes to form one word, and inflexional (fusional) languages fuse their morphemes, as in Latin, where a noun’s ending tells us the case (nominative, genitive, et cetera), the gender, and whether it is singular or plural.

<sup>8</sup> Ibid., 81 and 83.

<sup>9</sup> Ibid., 78; Barfield quotes from Otto Jespersen, *Progress in Language*, but does not mention page numbers.

<sup>10</sup> Ibid., 79.

is even more impossible ‘to cut’.”<sup>11</sup> Barfield also refers to an anthropologist who found that there are languages in which “although you can express twenty different kinds of cutting, you cannot say ‘cut’.”<sup>12</sup> According to Barfield, “the further we look back into the history of the meanings of common words, the more closely we find them approximating to this (...) *concrete* type.”<sup>13</sup> An example is the Greek ‘pneuma’ as used in the New Testament, in which “we can hear (...) an echo of just such an old, concrete, *undivided* meaning”. What is undivided here is the physical and the psychic, which in our translation become separated: ‘pneuma’ must be translated as ‘spirit’ and/or ‘wind’. Such ‘purely abstract’ and ‘purely material’ contents “are both *late* arrivals in human consciousness”.<sup>14</sup> “So far from the psychic meaning of ‘spiritus’ [the Latin equivalent of ‘pneuma’] having arisen because someone had the abstract idea, ‘principle of life...’ and wanted a word for it, the abstract idea ‘principle of life’ is itself a *product* of the old concrete *meaning* ‘spiritus’, which contained within itself the germs of both later significations. We must, therefore, imagine a time when ‘spiritus’ or πνευμα, or older words from which these had descended, meant neither *breath*, nor *wind*, nor *spirit*, nor yet all of these three things, but when they simply had *their own peculiar meaning*, which has since, in the course of the evolution of consciousness, crystallized into the three meanings specified (...)”<sup>15</sup>

Thus, analogous to Voegelin’s speaking of a development from compactness to differentiation, Barfield speaks of a movement ‘from homogeneity towards dissociation and multiplicity’.<sup>16</sup> Voegelin’s ‘compactness’ corresponds with Barfield’s ‘concreteness’; his ‘differentiation’ with Barfield’s ‘abstraction’. Barfield also points to the work of psychologist J. M. Baldwin, who “shows how a child’s apparent ‘generalizations’ are in reality single meanings, which it has not yet learnt to split up into two or more. ‘All psychic dualisms and distinctions’, he points out, ‘are meanings in the sense that they are *differentiations from earlier and more simple [sic] apprehensions.*”<sup>17</sup> The linguistic development of the child, then, seems to resemble the evolution of languages in this respect. Barfield adduces examples of ‘primitive’ languages which, for instance, have words for all sorts of trees, but none for ‘tree’ in general – supposedly, such languages are ‘concrete’ (in Voegelin’s terms: compact), which means that the meanings of words are connected with concrete experiences, not with elements of those experiences laid bare by analysis – as would be ‘tree-ness’ as an element that

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<sup>11</sup> Idem.

<sup>12</sup> Ibid., 83. The reference is to R.R. Marett, *Anthropology*.

<sup>13</sup> Ibid., 79.

<sup>14</sup> Ibid., 80.

<sup>15</sup> Ibid., 81.

<sup>16</sup> Idem.

<sup>17</sup> Ibid., 82-83. The italics are probably Barfield’s.



all trees have in common.<sup>18</sup> So originally, words referred to ‘sensible objects’, but these we must ‘suppose to be something more’. We “must suppose that they were not, as they appear to be at present, isolated, or detached, from thinking and feeling. Afterwards, in the development of language and thought, these single meanings split up into contrasting pairs – the abstract and the concrete, particular and general, objective and subjective. And the poesy felt by us to reside in ancient language consists just in this, that, out of our later, analytic, ‘subjective’ consciousness, a consciousness which has been brought about along with, and partly because of, this splitting up of meaning, we are led back to experience the original unity.”<sup>19</sup>

The idea that languages start out conveying concrete, undivided meanings, and develop through differentiation, the ‘splitting up’ of meaning, analysis, or whatever one wishes to call it, is highly interesting for my purpose. It corresponds very well with Voegelin’s use of the terminology of ‘compactness’ and ‘differentiation’, and the idea can be valid regardless of morphological matters; that is, regardless of whether languages start out being inflexional, isolating, or something else. I am concerned with semantic, not morphological differentiation. Barfield also relates his thoughts to myth, which he sees as conveying concrete meaning, the same way Voegelin sees it as a form of compact symbolization of man’s experience of the cosmos. “In the *Classical Dictionary*,” Barfield writes, “the student of poetic diction finds delicately mummified for his inspection any number of just those old single meanings, which the differentiating, analytic process already referred to has desiccated and dissected.”<sup>20</sup> Where Voegelin applauds the differentiation occurring in Greek philosophy, Barfield seems less happy with it. Nevertheless, he agrees with the idea that this differentiation occurs: “[T]he old, instinctive consciousness of single meanings, which comes down to us as the Greek myths, is already fighting for its life by Plato’s time (...).”<sup>21</sup>

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<sup>18</sup> Cf. Buber (2004), 22: “Consider the speech of ‘primitive’ peoples, that is, of those that have a meagre stock of objects, and whose life is built up within a narrow circle of acts highly charged with presentness. The nuclei of this speech, words in the form of sentences and original pre-grammatical structures (which later, splitting asunder, give rise to the many various kinds of words), mostly indicate the wholeness of a relation. We say ‘far away’; the Zulu has for that a word which means, in our sentence form, ‘There where someone cries out: “O mother, I am lost.”’ The Fuegian soars above our analytic wisdom with a seven-syllabled word whose precise meaning is, ‘They stare at one another, each waiting for the other to volunteer to do what both wish, but are not able to do.’ In this total situation the persons, as expressed both in nouns and pronouns, are embedded, still only in relief and without finished independence. The chief concern is not with these products of analysis and reflection but with the true original unity, the lived relation.”

<sup>19</sup> *Ibid.*, 85-86.

<sup>20</sup> *Ibid.*, 91.

<sup>21</sup> *Ibid.*, 95.

Now that we have gained a clearer understanding of ‘compactness’ and ‘differentiation’ in language and experience, one question is worth considering: that of the relation between compact and symbolic language. We have seen that it is a mistake to see the earliest language either as completely symbolic (‘metaphorical’, Barfield would say), or as pre-symbolic, in the sense that it contained only material meanings, which then had to be metaphorically transferred to the realm of the psyche and the immaterial. Compact language had its ‘own peculiar meaning’. But its association with symbolic language is not strange, according to Barfield: “It is really not at all surprising that philologists should have had such a vivid hallucination of metaphor bending over the cradle of meaning. For the distinction is a distinction of agent rather than of function, and the principle is indeed one. (...) *Figure* and *figurative* (...) may justly be applied, owing to the perceptual or aesthetic, the *pictorial*, form in which these unitary meanings first manifest in consciousness.”<sup>22</sup>

Where does this leave me, with the theory of symbols I have adopted? The distinction between symbolization and indication is the result of a differentiation that has not occurred in a compact language. That means that insofar as the language of the Egyptian texts I used was still compact, it was not simply symbolic – but neither was it indicative. *Insofar* as the language of the Egyptian texts was compact, these categories do not apply without qualification. If Barfield is right in associating compact experience with the experience of ‘living unity’, we are in a sense already where symbolism would bring us: we already have an integrated experience. The language used would reflect this; but it seems to me that it is still likely that there would be a difference among utterances in the manner and degree of personal involvement – so that even in a compact language, there would be some analogue for the distinction between symbolic and indicative language. As to the level of differentiation in the Egyptian language, I can only make some cautious remarks. Akhenaten’s employment of another symbol of Ra than was commonly used – he depicted the God as a disk with rays with hands at the end protruding from it – may indicate an *awareness* of the symbolic nature of those symbols, which would already be more than required for us to be able to speak of symbols in the full sense of the word. The user of symbols need not be cognitively aware of the symbolic nature of symbols he employs, let alone be able to manipulate them, as we can perhaps say that Akhenaten did. That a user of symbols need not be aware of his using symbols also means that the lack of a distinction between symbolic and indicative language need not prevent us, from a third-person perspective, to point out instances where language leans more to what we would call the

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<sup>22</sup> *Ibid.*, 88.

indicative side, or to the symbolic side.<sup>23</sup> Another point is that the Egyptian hieroglyphs have been said to be metaphorical, in the sense that metaphor was the cognitive tool required for the invention of this kind of script.<sup>24</sup> Finally, it is clear that the Egyptians differentiated between the physical and the psychic or spiritual, though not always. They held that every person had a Ba and a Ka, the first of which is usually translated as ‘personality’, while the second is ‘spirit’, in the sense of life-giving principle. While ‘Ka’ originally stood for ‘food’ as well as this spiritual ‘being’, it is clear that it came to signify the latter, as distinguished from anything physical. Yet, in the word ‘heart’ we see the connection between the physical and the psychic preserved.

In the previous chapter, we saw that in the case of the emerging symbol of conscience, the process of ‘symballein’ had not yet concentrated itself into a single symbolic term. In the Egyptian texts especially, we saw that different expressions in various contexts conveyed experiences of conscience. This is not a sign of differentiation, but of compactness: the word ‘heart’, for instance, could be used to express experiences of conscience, but it always expressed something more and other as well. Conscience was an element in various compact expressions. The same goes for Socrates’ ‘daimonion’, though that may constitute a more conscious use of symbolism.

### 2.2.2. ‘Syneidesis’; compactness and differentiation

The word ‘heart’ occurs quite frequently in the *Wisdom of Amenemope*. Anyone familiar with the Old Testament will know that it occurs there as well, and sometimes with similar connotations. In several places, the Greek translation gives ‘syneidesis’ in connection with ‘kardia’ (heart). The Hebrew ‘leb’, which we also translate ‘heart’, denotes the “Sitz, Zentrale und Träger aller geistigen Tätigkeiten, so auch der Bezogenheit zu Gott und der sittlichen Funktion. Es ist die gottgebildete Basis allen persönlichen Erlebens, Boden der Sünde und Liebe, der Reue und des Hasses [etc.]”.<sup>25</sup> An analysis of the contexts in which the word ‘heart’ occurs, reveals important similarities with the use of ‘syneidesis’ for the moral conscience. We now speak of a ‘good conscience’ or a ‘bad conscience’. Jewish texts speak of a ‘good or bad heart’.<sup>26</sup> Both in the Egyptian text and in Hebrew texts is the heart associated with the consciousness of sin, either as a witness or as a judge, or both.<sup>27</sup> In both, the awareness of sin is also an awareness *coram deo*, before God. Despite

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<sup>23</sup> Recall Tillich’s remark that the ultimate can only be expressed symbolically – a remark that is intended to apply to any human society.

<sup>24</sup> Goldwasser (1995).

<sup>25</sup> Stelzenberger (1961), 37.

<sup>26</sup> Idem.

<sup>27</sup> *Theologisches Wörterbuch zum Neuen Testament*, 909.

differences in quality between the Egyptian and the Old Testament use of ‘heart’, and between ‘heart’ and ‘syneidesis’, we can say that they are equivalent symbolizations, engendered by equivalent experiences.

Both the Greek ‘syneidesis’ and the Latin ‘conscientia’ are more differentiated symbolizations than the Egyptian or Old Testament ‘heart’; a number of elements of meaning are suggested by the terms themselves. This is mainly due to the combination of ‘oida’ and ‘scio’ with the prefixes ‘sun’ and ‘con’, respectively, that opened up a spectrum of possible meanings. It is relatively easy to trace the core elements of the symbol of conscience in the use of ‘syneidesis’ and ‘conscientia’. That we are dealing with a special kind of awareness concerning one’s own actions is far more explicitly expressed in these terms than in a term like ‘heart’, even though it took quite some time before ‘syneidesis’ took a reflexive turn, and even more time before its reflexive meaning became standard.<sup>28</sup>

#### 2.2.2.1. ‘Syneidesis’

‘Syneidesis’, the first known use of which is from the fifth century B.C., means, first of all, ‘shared knowledge’ – one knows something with another person.<sup>29</sup> When the knowledge is shared with none other than oneself, this is expressed by the phrase ‘synoida emautoi’. Its primary meaning is non-moral (or not exclusively moral) – the moral use of ‘syneidesis’ is a special case, which will only become prominent in Hellenistic times. Where older uses of ‘syneidesis’ can be translated as ‘conscience’, it is virtually always a guilty conscience that finds expression.<sup>30</sup> It is not useful to look into the development of the uses of words from the ‘synoida’ group in much detail here; a general statement will suffice. The history of that word group is multifarious. In the first century B.C., the substantives ‘syneidos’ and ‘syneidesis’ are more widely used, and the word group becomes more closely associated with the moral conscience.

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<sup>28</sup> This reflexive turn is a central theme in Seel (1953).

<sup>29</sup> I will speak mainly of ‘syneidesis’, but it should be noted that this is part of a group of words: the verb ‘synoida’ and the nouns ‘syneidos’, ‘synesis’, and ‘syneidesis’ are the most important members of this group. See *Theologisches Wörterbuch zum Neuen Testament*, 900. The general treatment of ‘syneidesis’ in this section is based on *Theologisches Wörterbuch zum Neuen Testament*, 897-918, Stelzenberger (1963b), 23-66, and Marietta (1970).

<sup>30</sup> V.A. Rodgers argues that the translation of ‘synesis’ and related expressions, as they occur in Greek tragedy, by the term ‘conscience’ is never justified; he does admit that they “indicate a growing awareness of the inner self, and an increasingly subtle psychological analysis” (Rodgers [1969], 254). Against this, I would like to cite what immediately follows the quotation from Otto Seel in note 1: “Und wer in diesem Betracht, um einer morphologischen Spezifikation willen allzu schroff schneidet, schneidet ins lebendige Leben (...).”

With respect to ‘syneidesis’, C.S. Lewis notes that an important shift of meaning occurred “whereby *conscience*, so to speak, passed from the witness-box to the bench and even to the legislator’s throne”.<sup>31</sup> Roughly until early Christian times, ‘syneidesis’ primarily conveyed a knowledge of one’s own (or sometimes another’s) actions that other people did not have – knowledge as a special witness. Though this was usually knowledge of the evil quality of an action, the fact that the action was evil was already known in some other way, according to Lewis. ‘Syneidesis’ was the witness, not the prosecutor or judge, and not the lawgiver. According to Lewis, the New Testament use of ‘syneidesis’ played an important part in the shift of meaning whereby ‘syneidesis’ ‘passed from the witness-box to the bench and even to the legislator’s throne’. The shift was ‘foreshadowed’, Lewis says, by Menander, who wrote that “to all mortals *suneidesis* is *theos* [a god/divine]”.<sup>32</sup> I might add that we find all three shades of meaning (conscience as witness, prosecutor or judge, and legislator) in the work of Philo of Alexandria (c. 20 B.C. – c. A.D. 50), although ‘legislator’ must not be taken narrowly here.<sup>33</sup> What is also important about Philo, is that he clearly differentiates between these ‘functions’ of conscience, as well as between conscience and the God behind it and working through it, a differentiation that will become even more pronounced later, as we will see.<sup>34</sup>

Lewis’ claims are supported by the evidence provided by historical dictionaries. Before the time of Philo, as far as we know, ‘syneidesis’ was not (clearly) used in any other meaning than that of the (internal) witness. This is a broad meaning in the sense that it does not differentiate between the moral and the non-moral; and at the same time, where it is used in a moral sense, it is rather narrow, for the symbol of conscience is not exhausted by ‘syneidesis’ in the sense of an internal witness. Socrates, in the passages referred to in the previous chapter, did not use the word ‘syneidesis’, but in

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<sup>31</sup> Lewis (1991), 191.

<sup>32</sup> Lewis (1991), 192. He quotes from Pierce (1955).

<sup>33</sup> See *Theologisches Wörterbuch zum Neuen Testament*, 910-912. One finds rather widely differing dates for Philo; the presented dates come from Honderich (ed.) (1995). Copleston (1962), 202, gives c. 25 B.C. – ‘some time after A.D. 40’. Samuel Sandmel says that he was presumably born ‘about 25 or 20 B.C.’, and that “the date of his death can be guessed at as around A.D. 50” (Sandmel [1979], 3).

<sup>34</sup> The *Theologisches Wörterbuch zum Neuen Testament*, 900, notes that originally, words of the ‘synoida’ group generally had little to do with anything divine: “Weder das im philosophischen noch das im moralischen Sinne verstandene Gewissen hat viel mit der Gottheit zu tun.” With respect to the Menander passage, it says that it is hardly the common interpretation to say that conscience is there held to originate from God or to be divine in nature; the dictionary suggests that it was meant mockingly, to say that for an incorrigible know-it-all, his own conscience is his god. Serious or not, the passage is probably best read as *comparing* conscience to a god, rather than saying that conscience is divine (in nature or origin).

his own terms he constructed a much richer symbolism, as we have seen. This is a clear illustration of the fact that the symbol is not tied to one term.<sup>35</sup> The symbolism used by Socrates indicates that experience was not limited to the ‘witness element’ of conscience. The levels of experience and symbolization are, in this period, not always closely linked to the term ‘syneidesis’. Pierce gives an example from Xenophon’s version of the *Apology* of Socrates, however, in which “Socrates is content to let their own *συνειδησις* punish those who induced the witnesses at the trial to give perjured evidence against him, for he is satisfied that in the nature of things they will suffer greatly from such knowledge within themselves of sacrilege and injustice, which will have followed automatically upon the act’s commission”.<sup>36</sup>

Generally speaking, it is in the first century A.D. that the moral sense of ‘syneidesis’ becomes dominant, and that in that moral sense the term starts to acquire more elements of meaning, and to become more widespread. Even more importantly, it is at this time that the substantives ‘syneidesis’ and ‘syneidos’ start to be used frequently; the former in the New Testament (and by Paul in particular), the latter by Philo.<sup>37</sup> In the paulinian texts in the New Testament, ‘syneidesis’ has become a rich symbol, conveying the three core experiential elements identified in the previous chapter, but with strong religious overtones. The *Theologisches Wörterbuch zum Neuen Testament* states that with St. Paul, ‘syneidesis’ stands (roughly translated) for “the *γνωσις* [gnosis], in which the knowledge and understanding perception of facts at hand, the affirmative choice of commitments desired by God and the valuating self-judgement are concentrated [zusammengefaßt] in a whole”.<sup>38</sup> It is also described as a kind of self-consciousness “that is threatened in its existence” – but here I would say: ‘that is insistent’ – when “acknowledging and knowing [Anerkennen und Erkennen], desire and knowledge [Wollen und Wissen], judgement and action diverge”.<sup>39</sup> It is emphasized, furthermore, that ‘syneidesis’ should not

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<sup>35</sup> Cf. Kittsteiner (1995), 18: “Das Phänomen kann beschrieben werden, ohne daß das Wort dabei gebraucht werden muß.” As will be clear by now, I would prefer to speak of expression, rather than of description – but otherwise I agree with Kittsteiner. Cf. Seel (1953), 298: “Daß die Untersuchung des antiken Verhältnisses zu dem seelischen Sachverhalt, den wir ‘Gewissen’ nennen, von dem Wort *συνειδησις* (...) ausgegangen ist, versteht sich von selbst. Daß sie sich nicht darauf beschränken darf, ist auch bereits gesagt (...).”

<sup>36</sup> Pierce (1955), 40.

<sup>37</sup> Bosman (2003), 276: “Two ancient authors, Philo and Paul, represent a decisive moment in the history of the word group in that substantive forms for the first time feature with relative frequency in their writings. Philo’s use is dominated by the substantive participle *συνειδος*, while Paul prefers the verbal substantive *συνειδησις*.”

<sup>38</sup> *Theologisches Wörterbuch zum Neuen Testament*, 913.

<sup>39</sup> Idem.

be taken to be a faculty of judgement; the term also designates the person itself, as aware of himself in certain respects. The element of intimacy is quite pronounced in Paul's use of 'syneidesis'.

#### 2.2.2.2 *Consequences of differentiation*

It is very important to note that 'syneidesis' (whether as 'conscience' or in a more general sense) was never a technical term. It came from the vocabulary of common people. Marietta elaborates this point. She notes that "[a]fter (...) non-moral uses of *syneidesis* in the fifth and fourth centuries, the term dropped from sight until near the beginning of the Christian era." The term "reappeared in literature of the Hellenistic period, and now with an ethical connotation. (...) The Hellenistic concern for ethics and the individual's inner attitudes fostered the development of the concept of conscience." She does note that "[t]he ethical and non-ethical aspects (...) were conveyed by the same word, and only the context indicated the moral quality of the object of the consciousness."<sup>40</sup> A bit further on, she discusses the question as to the Stoic influence in shaping the use of 'syneidesis' – a question that naturally arises given the term's sudden prominence in the Hellenistic era. In the course of her discussion, she says that there "seems to have been a popular Hellenistic moral philosophy which would have influenced Greek and Roman moralists alike. (...) It seems likely that Latin Stoic use of *conscientia* reflects the popular use of *syneidesis*."<sup>41</sup> She argues against Friedrich Zucker, who "argues that the lack of a definition of conscience in Stoic literature shows that the concept had little significance in Stoicism": "the lack of a definition probably indicates that none was thought necessary. The Stoics would have needed a definition if their readers were not familiar with the term, or if they were using the term in an unusual or technical way. (...) *Syneidesis* seems to have been part of the syncretistic religious and ethical thought which permeated the Graeco-Roman world. Rather than originating as a technical philosophical term, *syneidesis* as a term for moral consciousness developed in the common speech of the people." The term grew "out of the experience of the people"; it "appears to have been a common and popular word, never carefully defined, never made a philosophical technicality, but simply taken for granted and used to express an important but little analyzed experience of the ordinary man."<sup>42</sup>

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<sup>40</sup> Marietta (1970), 178.

<sup>41</sup> *Ibid.*, 184.

<sup>42</sup> *Ibid.*, 186. Cf. Seel (1953), 302, who, with regard to fifth century B.C. uses of words from the 'synoida' group says: "Zusammenfassend sei festgestellt, daß die – bis jetzt – frühesten und deutlichsten Belege für die Formulierung jenes 'krummen' Gefühls, das man Gewissen nennt, sich in der Komödie finden, also in einer dem vulgären Umgangston nahestehenden, dem γένος ἰσχνόν angehörigen Stillage." Cf. also *Theologisches Wörterbuch zum Neuen Testament*, 900, on the same point, and 912, with regard to St. Paul's use of 'syneidesis': his frequent use of the term in the

So ‘syneidesis’ may in itself be a more differentiated notion than, for instance, ‘heart’, but this differentiation was not produced by analysis, and was not the result of reflection on the awareness of sin. That suggests that the symbolic aspect of ‘syneidesis’ was probably still strong – it was an expression of quite common experiences, rather than an analytically distinguished element in people’s experience. For the importance of differentiation is twofold: 1) inherent in differentiation, especially when related to (philosophical or theological) analysis, is a tendency towards doctrinalization; 2) differentiation enables the meanings of terms to change, and stimulates this. This is paradoxical, for doctrinalization implies the fixation of meaning. The solution of the paradox lies in the relation between differentiation and abstraction. Increasing linguistic differentiation implies greater abstraction of the resulting notions – we have seen that in 2.2.1. The more we differentiate between diverse elements of experience, and the more we give these elements their own separate names, the more we abstract from the concrete, undivided experience. The names we have devised are abstractions from an always more compact reality. The attempt to define all the various elements of experience we are able to discern, and the attempt – the other way around – to pin-point the exact meanings of the terms we have coined for the purpose, constitute thrusts in the direction of doctrine. Yet simultaneously, because our notions (concepts) are abstract and therefore only loosely connected to concrete experience, the meanings of those notions are apt to undergo change. Shifts in meaning may occur undetected and unchecked for a long time, simply because the connection with experience – the only thing that might check such shifts – is lacking. Moreover, the lack of a (strong) connection between concrete experiences and abstract notions *necessitates* a continuous redefinition of those notions, in order to prevent them from drifting further and further away from the experiences to which they are supposed to apply. Also, where thinkers are not concerned with the connection with concrete experience, the abstractness of these notions allows them to manipulate these notions so as to fit more general theological or philosophical systems.

The ‘differentiation paradox’ can also be stated in terms of vagueness and precision: differentiation leads to more precision, in the sense that the precise location of a concept in a conceptual network becomes more and more clearly delineated; its relation to ‘neighbouring’ concepts is

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context of discussions concerning sacrificial meat “läßt vermuten, daß hier ein in der Gemeinde umlaufendes Stichwort aufgenommen und umgeprägt wird”; Köster (1980), 110, points out that the language of the New Testament is the colloquial language, not that of literature. See also Kittsteiner (1995), 20: “Zur Grundlage einer individuellen Sittlichkeit wird das Gewissen aber erst in den Jahrhunderten vor und nach der Zeitenwende. Nicht von der philosophischen Schulsprache herkommend, sondern aus der Umgangssprache und der hellenistischen Popularphilosophie dringt es in das Vokabular der mittleren und jüngeren Stoa ein.”



explicitated, or becomes explicit (if the differentiation is a natural process, rather than the result of a conscious effort). Differentiation also leads to increasing vagueness, in the sense that the relation between concepts and concrete experiences becomes vaguer. Precision can be gained through *external* or *internal* differentiation. External differentiation is what I described just now: it concerns the clarification of the relation between one concept and surrounding concepts and the precise delineation of its width of application. Internal differentiation is a similar process, but *within* a concept; increasing internal differentiation means that an increasing number of aspects of a concept are distinguished and named. This brings with it the possibility of emphasizing one aspect at the cost of another, and in its wake, in the case of conscience, the possibility of a plurality of concepts of conscience. The origination of a plurality of concepts of conscience itself is not what I mean by differentiation, though it is related to internal differentiation. So when Stelzenberger speaks of the ‘Differenziiertheit’ of the modern concept of conscience, he is using the term in another, less technical sense; he refers merely to the plurality of concepts, to the manifold meanings of the word ‘Gewissen’. While this situation, that the word has so many meanings, and that it is often unclear which is meant, is a result of (among other things) internal differentiation in the (earlier) concept of conscience, I would not call the resulting plurality of meanings itself an example of differentiation. Rather, it might constitute a new compactness, in so far as the use of the word draws in fact not on just one of the available meanings, but on several at the same time.

Compact experiences persist and arise next to more differentiated experiences, and compact language remains and appears side by side with more differentiated language; and even highly differentiated experiences are always more compact than the most differentiated language. This is due to the fundamental difference between experience and analysis of experience. Symbols can be more or less compact, but they always retain an element of compactness – this they have in common with experiences. Symbols always integrate a plurality of experiences and elements of experience. Compact symbols of conscience persist throughout European history, alongside philosophical theories of conscience. The (sub)symbols of the worm and the voice of conscience are good examples of this. In the Middle Ages, we see that besides the highly differentiated and doctrinal theories of conscience of the scholastics, an anti-doctrinal mystic movement exists, with its own symbolization of conscience.<sup>43</sup> Because of their compactness, symbols constitute a perpetual challenge to the differentiating consciousness, and a continuous threat to differentiated thought. The differentiating consciousness (of theologians, philosophers, psychologists) has always tried either to suppress symbolic language, or to discipline it and harness it for its

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<sup>43</sup> Cf. Stelzenberger (1961), 12-13. See 2.5.

purposes.<sup>44</sup> It is no wonder, then, that the symbolic aspect of expressions of conscience tends to go unnoticed and/or undiscussed.

### 2.2.3. 'Syneidesis' in Philo and the New Testament

In the introduction to this chapter, I pointed out that I would provide nothing more than a sketch of some important trends in the development of expressions of and reflection on conscience. In this section, which is concerned with a development from compactness to differentiation, Philo of Alexandria and the New Testament use of 'syneidesis' will be discussed, because they constitute key points in that development. That means that many authors (philosophers and others) will be mentioned only in passing or not at all. However, to mention every author that used the term 'syneidesis', a related term, or some other expression of conscience – not that 'syneidesis' is always an expression of conscience, of course – would only distract from our purpose. As a final justifying remark I might add that Philo and the New Testament are not only important in the development from compactness to differentiation, but also for their semantic contribution to the symbolization of conscience. Later expressions of conscience often (consciously or unconsciously) hark back to these sources.

When Philo and New Testament writers employed the words 'syneidos' and 'syneidesis', they were adopting a notion from Hellenistic folk psychology. They did not just adapt themselves to common linguistic practice, however. Philo was the first to come up with what we (with some imagination) might call a 'theory' of conscience, while with the apostle Paul and in the New Testament in general the term received a new shade of meaning – according to some authors even a profoundly different meaning. Philo contributed much to (later) differentiation and doctrinalization; later reflection (by church fathers) on the meaning of 'syneidesis' in the New Testament had the same effect.

#### 2.2.3.1. 'Syneidos' and 'syneidesis' in Philo

Philo of Alexandria, or Philo Judaeus ('the Jew'), a contemporary of Jesus and Paul, among others, can be called a Greek Jew – or a Jewish Greek.<sup>45</sup> Sandmel does not choose between the two, but explains Philo's position as follows: "Philo's basic religious ideas are Jewish, his intuitions Jewish, and his loyalties Jewish, but his explanations of ideas, intuitions, and devotions are invariably Greek. Scripture has its array of prophets, and Philo 'believes' in prophecy; when Philo explains what prophecy is and how it works, his exposition comes from Plato."<sup>46</sup> Copleston says that eastern thinkers of the second period in the development of Hellenistic-Roman philosophy,

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<sup>44</sup> This is a recurring theme in Kittsteiner's book.

<sup>45</sup> Sandmel (1979), 15-16.

<sup>46</sup> Ibid., 15.

thinkers like Philo, “tried to systematise their religious conceptions in a philosophic framework”.<sup>47</sup>

Very little is known about him as a person, though much of his writing has been preserved – by Christians, significantly; this is where his main influence lay.<sup>48</sup> What we do know is that he came from a social and intellectual elite.<sup>49</sup> Stelzenberger remarks that Paul and the other New Testament writers adopt the term ‘syneidesis’ from the popular philosophy of their Hellenistic environment, and adds: “Verwendet ist nur das ionische Wort syneidesis. Das attische syneidós und synesis fehlen.”<sup>50</sup> The relevance of this remark only becomes clear in combination with what Sandmel says about Philo’s language: “His Greek is the *koine*, but it is in the pretentious imitation of Athens that is customarily called Atticistic.” Philo, who does indeed normally use ‘syneidos’, and only thrice ‘syneidesis’, writes an elitist form of the *koine* Greek, whereas Paul’s language is that of the common people.<sup>51</sup> Philo certainly did not address a similar public to that addressed by Paul, though we do not really know what his readership consisted of.<sup>52</sup>

In his work, Philo was mainly concerned with demonstrating that “the same truth is to be found in both the Greek philosophy and Jewish

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<sup>47</sup> Copleston (1962), 127. He also notes that “[t]hinkers like Philo were, of course, also influenced by the desire to win over the Greeks for their un-Greek doctrines by presenting the latter in philosophic guise”.

<sup>48</sup> Sandmel (1979), 171 (note 3 to ch. 1), notes that “Philo’s writings became useful to Christians in Alexandria. A result was the rewriting of at least one passage, the first part of *Prov* [*De Providentia*]. The view arose that Philo had converted to Christianity; baseless as this is, it nevertheless points to the congruencies between Philo’s theological position and that of Christians such as Clement and Origen.”

<sup>49</sup> His brother, Alexander Lysimachus, held the position of ‘alabarch’ for some time – apparently an ‘alabarch’ was an important political leader or authority. “Alexander”, Sandmel notes, “was eminent enough to have been the ‘guardian’ of the mother of the Emperor Tiberius and wealthy enough to have made a substantial loan to Agrippa P”, who was a grandson of Herod the Great (Sandmel [1979], 10-11). Presumably, Philo shared in this wealth and prestige; at any rate, he could afford to spend a lot of his time writing, and we know nothing that suggests that Philo earned money in some function or other.

<sup>50</sup> Stelzenberger (1963b), 35.

<sup>51</sup> *Theologisches Wörterbuch zum Neuen Testament*, 910: ‘syneidesis’ is used in particular combinations, always meaning ‘Das Wissen um eigene unrechte Taten’; “Das Gewissen heißt συνειδος.” Cf. Marietta (1970), 178: “My study indicates that *syneidesis* and *syneidos* had the same meaning, but more style conscious writers such as Josephus, Philo, Simplicius, and Plutarch prefer *syneidos*, while *Wisdom of Solomon*, Dionysius of Halicarnassus, and Diodorus Siculus use *syneidesis*.” Bosman (2003), 106, maintains that it is difficult to establish why Philo prefers ‘syneidos’: it “might simply be Philo’s choice of Greek for the Latin *conscientia* or it might be linked to the fact that Attic forms were generally regarded as more elegant”.

<sup>52</sup> Sandmel (1979), 14.

Scriptures and tradition”.<sup>53</sup> He believed that the philosophers had made use of the Scriptures, and, more importantly, he interpreted the Scriptures allegorically, so as to render their meaning compatible with Greek philosophy.<sup>54</sup> He invented a complete system, we might say, of allegorical interpretations of the Scriptures. Indeed, he held that the ‘literal’ reading of them was inferior to the non-literal, allegorical interpretation. The former was necessary for the common people, however, because to them the latter was unattainable. By means of allegory, Philo transformed “biblical characters, or biblical place-names, into universal types of people, or universal characteristics of mankind”.<sup>55</sup> He took the method of allegory from the Stoics, who interpreted Homer and Homeric legends allegorically. What he also took from them and/or from Plato is the distinction between a sensible world (*kosmos aesthetikos*) and an intelligible world (*kosmos noëtos*). He interpreted the Scriptures as providing a map for the journey to spiritual perfection that everyone can make, a journey which entails a ‘departure’ from the sensible world, to enter the intelligible world, the world of ideas, of immortality.<sup>56</sup>

For Philo’s ethics, this distinction between the worldly and the spiritual is also important, in the form of a dualism between body and soul. Sandmel notes that in the Scriptures, the Deity tends to judge and reward or punish people collectively, as a community of the (un)faithful. Some texts, however, individualize good and evil, righteousness and unrighteousness. According to Sandmel, Scripture “simply assumes that man is free to choose evil or good. That such choice can involve a complexity of moral dilemmas seems not to be raised in Scripture. Rather, it is held that man has in him both an impulse to good and one to evil. (...) [I]n Scripture there is no extended development of the theme of two impulses. Later Rabbinic thought (...) does not probe in any depth into the inner psyche of man.”<sup>57</sup> Philo’s thought is significantly different – and this is especially significant in the present context: “Not only does Philo present such a probing with what is to be described as some complexity, but his dualism of body and soul is an important element in his probing.”<sup>58</sup> Philo probes into the inner psyche of man; hence, it is not surprising that we find the earliest thorough reflection on ‘conscience’ (*syneidos*) in his work. Sandmel goes on to discuss the relation between Philo’s body-soul dualism and his ethics; he does not, in this short chapter, speak of conscience. “In a general way,” Sandmel says, “it is his view that those deeds which are associated with the body, especially

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<sup>53</sup> Copleston (1962), 202.

<sup>54</sup> *Idem*.

<sup>55</sup> Sandmel (1979), 18.

<sup>56</sup> *Ibid.*, 19; 24-25.

<sup>57</sup> *Ibid.*, 112.

<sup>58</sup> *Idem*.

with the gratification of the senses, are evil; those which stem from the soul are good and related to the virtues. The worthy man seeks for the virtues, meaning in effect that man should live by the soul, this through rising above the body.”<sup>59</sup> For Philo, the virtues are closely bound up with piety. “The goal of righteous living is achieved when man, observing the Laws of Moses, thereby progresses from this sensible world into the intelligible world where virtue, piety, and wisdom abide.”<sup>60</sup> The result of reaching this goal, Sandmel says, is spiritual joy. Against Wolfson, Sandmel maintains that Philo agreed with the Stoics in seeing virtue as its own reward. Importantly, he did not foresee a reward for virtue and a punishment for vice in the afterlife. Here, Philo departs from traditional Jewish thought, in which there is an afterlife where one receives one’s due reward or punishment. “In Philo, there is no hint of these matters, and no real concept of a future heaven or hell.”<sup>61</sup> For him, “immortality is the ordinary sequel to a man’s rising above his body; at death, his soul simply becomes separated from it. Immortality in Philo seems never to be conceived of as a reward, but only as a natural destiny.”<sup>62</sup>

Against this background, it is quite understandable that Philo would be the first to come to something of a ‘theory’ of conscience.<sup>63</sup> He is a Jew, and has the Jewish concern with ethics; he combines this with a Greek focus on psychology. Human life, for him, is (or should be) a spiritual journey; that is, a journey towards the spiritual. The goal of this journey is reached through a life of virtue and piety, which are two sides of the same coin. This journey is not easy. Given man’s (bodily) tendencies towards evil, man needs to be warned, rebuked, punished, guided. For this purpose, God has placed the conscience in our soul. This is usually a bad conscience, but it has a positive function; it is through conscience that God tries to keep people on the right path in their journey.<sup>64</sup> “[D]as fehlen dieses Strafens käme der völligen Preisgabe des Menschen durch Gott gleich.”<sup>65</sup>

The *Theologisches Wörterbuch zum Neuen Testament* reserves ample space for Philo’s ‘theory’ of conscience. It notes that “[d]ie Aufgabe des Gewissens

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<sup>59</sup> Ibid., 112-113. Hence Philo’s admiration for the Essenes and the Therapeutae, groups that, both in their own way, emphasized the spiritual over the worldly in the way they lived.

<sup>60</sup> Ibid., 114.

<sup>61</sup> Ibid., 116.

<sup>62</sup> Ibid., 117.

<sup>63</sup> The word ‘theory’ is not so strange or out of place if we take it quite literally; the Greek ‘theorein’ meaning ‘to see’, a theory would simply be a way of seeing something.

<sup>64</sup> Because ‘conscience’ is normally a bad conscience, we do not find expressions like ‘bad conscience’ in Philo’s work – they would be pleonastic. Instead of using ‘kardia’ for ‘heart’ in the Old Testament sense, Philo sometimes speaks of a ‘good conscience’, as in ‘ek katharou suneidotos’ (‘from [a] good conscience’).

<sup>65</sup> *Theologisches Wörterbuch zum Neuen Testament*, 911.

ist das ελεγχειν.”<sup>66</sup> In the term ‘elenchein’ the whole juridical process from the issued complaint to the rebuke and the judgement by the judge is metaphorically concentrated.<sup>67</sup> This process of ‘elenchein’ takes place before the inner forum, or in the inner court. As accuser, the conscience cannot be bribed; it is incorruptible. As judge, conscience is infallible. Its workings are described in terms like ‘anstacheln, schlagen, martern’ (‘to urge/spur on’, ‘to hit’, ‘to torture’).<sup>68</sup> Marietta, having surveyed the range of metaphors Philo employs (the judge [‘dikastes’], the accuser [‘kategoros’], the witness [‘martys’], and most commonly the scrutinizer, reprover or convictor), concludes: “Clearly, Philo saw the *syneidos* as that within man which convicts him of his evil.”<sup>69</sup> Outward consequences and signs of the bad conscience are a lack of ‘thrasos’ (courage), ‘parresia’ (freedom of speech), or other inhibitions; inner turmoil (‘tarache’), fear (‘phobos’), and pain (‘lupe’) go together with outward confusion, inhibited speech, as well as insincerity, deceitfulness, and a lack of integrity.<sup>70</sup> If conscience succeeds in ‘turning’ or converting a man, however, it is joyful and reconciled.<sup>71</sup>

The way conscience manifests itself according to Philo must be understood in its theological context: conscience has an important place in the battle against sin. It is sent by God to effect man’s conversion, to make man repent and confess his sins. Hence, conscience is given man in order that his soul may be saved – not in the afterlife, but in this life. “Wenn er [Gott] uns aber straft, so wird er uns, da er ja gütig ist, nachsichtig u[nd] milde die Sünden wieder gutmachen, indem er den zurechtweisenden Elenchus, seinen eigenen Logos, in unsere Seele sendet, durch welchen er sie, nachdem er sie wegen ihrer Sünden geschmäht u[nd] getadelt hat, retten wird.”<sup>72</sup> To this purpose of saving man’s soul, or helping man keep to the

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<sup>66</sup> Ibid., 910. Marietta notes that ‘syneidos’ is related to ‘elegchos’ or ‘elegchō’ (her spelling) in almost half of its occurrences. For the relation between ‘elenchos’ or ‘elenchein’ and ‘syneidos’ see Bosman (2003), 109-111; he says that ‘elenchos’ and ‘syneidos’ function as synonyms in Philo, while retaining their own intrinsic meaning.

<sup>67</sup> Conscience does *not* punish (Marietta [1970], 178).

<sup>68</sup> *Theologisches Wörterbuch zum Neuen Testament*, 910.

<sup>69</sup> Marietta (1970), 179.

<sup>70</sup> Bosman (2003), 90-95, 178. Bosman notes that “[t]he inhibiting effect is particularly unacceptable as such inhibitions are associated with a lack of freedom traditionally belonging to the lower social strata such as slaves, women and children” (178); and explains that in the literature “descriptions of interactive inhibitions are collectively referred to as the *παρρησια* topos”, while ‘lack of *παρρησια*’ topos would have been more appropriate (90).

<sup>71</sup> *Theologisches Wörterbuch zum Neuen Testament*, 910; see the quotation from *Die Werke Philos von Alexandria in deutscher Übersetzung* I, Leopold Cohn (ed.), Marcus, Breslau, 1909, 390.

<sup>72</sup> *Theologisches Wörterbuch zum Neuen Testament*, 911; the passage is from *Quod Deterius Potiori Insidiari Soleat* 145f.

right path in his spiritual journey, conscience could also play the role of a guide. In Philo's writings, there are two places where he seems to suggest this. Both concern an allegorical interpretation of Genesis 37:15, where a man who points out the way to Joseph is taken to be the true 'Anthropos', who inhabits the soul, functioning both as Lord and King and as Judge.<sup>73</sup> The *Theologisches Wörterbuch zum Neuen Testament* comments on the vagueness of both passages, saying that not only the conscience, but also the 'nous' and the 'theios logos' are identified with the 'elenchos'. It would go too far, the *Wörterbuch* says, to ascribe the guiding function simply to the conscience.<sup>74</sup>

The *Theologisches Wörterbuch* ends its section on Philo with a subsection on his historical situation. It points out the connections with the Stoics, from whom he takes (among other things) the idea of a divine 'logos' or 'nous', implanted in the soul, an idea which he transposes to the conscience. New is that he sees conscience as independent from reason and as manifesting itself spontaneously. The *Theologisches Wörterbuch* sees his 'decisive contribution' to the development of a doctrine or theory of conscience as deriving from the Old Testament. His indebtedness to the Scriptures is said to be threefold: it resides in his use of 'elenchos', in the juridical function of conscience – for the Roman Stoics, the witness ('testis') is much more an onlooker than a witness in a trial – and in the religious point of departure of the theory of conscience. The person of God stands behind the conscience as accuser and judge.<sup>75</sup> His thought is more strongly ethical than that of the Stoics; it is more focused on the interior and on individual psychology than Jewish thought; in this combination, I would say, lies Philo's greatest contribution to later (Christian) thought.<sup>76</sup> I say *later* thought, because most likely he did *not* influence Paul.<sup>77</sup> It was the Church Fathers who took up his work, without, however, taking over the term 'syneidos'.<sup>78</sup>

As a final remark, I should say something about Philo's 'theory' of conscience. We must not misunderstand the nature of his reflection on the subject. What Philo did, was to give conscience a place in a broader, systematic, theological framework. He also made an effort in describing and to a certain extent analyzing the phenomenology of conscience, in a manner

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<sup>73</sup> Cf. Marietta (1970), 180. Compare also Adam Smith's 'man within'.

<sup>74</sup> *Theologisches Wörterbuch zum neuen Testament*, 911.

<sup>75</sup> *Ibid.*, 912.

<sup>76</sup> Cf. Raju (1966), 52-53; he, however, speaks of Philo's main contribution to Jewish thought – this is an odd remark, given that Philo's main influence lay in the Christian world.

<sup>77</sup> See, for instance, Stelzenberger (1989), 205. Bosman (2003), 9, argues that this option should be kept open, however; pointing out a possible connection between Philo and a Corinthian 'Apollos' group, which may have been the group within the Christian community Paul argued against.

<sup>78</sup> Bosman (2003), 17.

directly related to his ideas concerning the function(s) of conscience. Conscience can be experienced as judging one's actions or thoughts; hence, conscience can be said to function as a judge. It can be experienced as accusing one's own person; hence, conscience functions as an accuser. There is a beginning of a conceptual network in which conscience ("syneidos") has a place; the most important neighbouring concept is that of 'elenchos'. But with all this said, we must remain aware of what Philo did *not* do: he did not formulate anything like a medieval scholastic doctrine of conscience; he did not elaborate on the place of conscience among (other) human faculties; he did not problematize conscience in any way (what about misplaced guilt?); he did not move far beyond phenomenology.<sup>79</sup> In a way, this is also what is good about his thought on the subject. 'Syneidos' is still very much a symbolic term, even if it has a place in 'theory', and we see that it is embedded in a range of metaphors, mostly pertaining to the juridical sphere or process. He takes this symbolic expression of primarily painful or troubling experiences of conscience from the popular philosophy of his time and situates it within his own peculiar mixture of Stoic (Hellenistic) philosophy and Jewish theology.

#### 2.2.3.2. 'Syneidesis' in the New Testament

Much has been written about the meaning of 'syneidesis' in the New Testament, not least because of its sudden abundant appearance there – the term occurs only three times in the Greek translation of the Old Testament and its originally Greek books.<sup>80</sup> Authors tend to focus on Paul's contribution to the (supposedly) new meaning of 'syneidesis', not least because he is responsible for half of the occurrences of the term in the New Testament.<sup>81</sup> But here the problems have already started, for when I say half, I mean fifteen, whereas Stelzenberger ascribes twenty occurrences to Paul. The reason for that is quite simple: Stelzenberger considers the so-called *Pastoral Epistles* (I and II Timothy, and Titus) to be written by Paul, whereas

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<sup>79</sup> Marietta (1970) notes that it "should be understood (...) that conscience is not described as a repository of ethical norms or as an infallible inner oracle". I am not in a position to judge whether Philo took 'syneidos' to be infallible or not; according to the *Theologisches Wörterbuch*, Philo took it to be an infallible judge. It is possible that Marietta meant primarily to counter the idea that conscience was understood as an inner oracle that one could consult to get infallible advice; this could be consistent with the idea of conscience as infallibly judging past actions, in the sense that the shameful or guilty awareness of sin invariably arises when it is appropriate, and never when it is not.

<sup>80</sup> The sites are: Ecclesiastes 10:20; Wisdom 17:10; Sirach 42:18. See Schnackenburg (1988), 49. According to Stelzenberger (1989), 37, the Sirach passage is a gloss.

<sup>81</sup> Well, he and those responsible for the canonization of the New Testament, of course; that is, St. Athanasius (with a letter to the churches in A.D. 367) and the participants in the Third Council of Carthage in 397.



many (if not most) specialists today would dispute this. This has important consequences for the interpretation of Paul's use of 'syneidesis', as we shall see.

Kittsteiner adopts Eckstein's and Kähler's interpretation of 'syneidesis' in the paulinian writings. For Jews and Gentiles alike, 'syneidesis' is a witness to their actions. "Diese Zeugenschaft ist aber in ihrer anklagenden und den Menschen schmerzhaft aufspaltenden Funktion zugleich überwunden durch das Christusgeschehen: in der Annahme durch einen gnädigen Gott zeigt sich das eigentlich Neue im paulinischen Gewissensbegriff."<sup>82</sup> The novelty of the paulinian use of 'syneidesis' is also emphasized in the *Theologisches Wörterbuch zum Neuen Testament* and by Stelzenberger. In the former we find the following question and answer: "Warum hat das Gewissen bei Paulus die Rolle des anklagenden und überführenden Elenchus gegenüber dem Spätjudentum so stark eingebüßt? Der Grund dafür liegt nicht in der stärkeren hellenistischen oder rabbinischen Herkunft des Apostels. Er hängt mit dem Neuen zusammen, das Paulus mit seinem Evangelium von Jesus Christus zu sagen hat. Die anklagende Stimme des Gewissens ist deshalb überwunden, weil der noch ungleich schärfere Ankläger, das von Gott geoffenbarte Gesetz, das nicht nur anklagt, sondern tötet (R 7, 7 ff), abgetan und durch die freisprechende Stimme des in Christus neuschaffenden Gottes abgelöst ist." As in the interpretation presented by Kittsteiner, an opposition is constructed between a tormented conscience on the one hand, and a freed, absolved Christian conscience on the other. Stelzenberger does not emphasize this aspect of the 'justification by faith' so much, but he does repeatedly insist on the novelty of the New Testament, especially the paulinian, use of 'syneidesis'.<sup>83</sup> This claim is nowhere substantiated by any supporting remarks, except in one place, and even there rather briefly.<sup>84</sup> Below, I will first look into the interpretation of the paulinian 'syneidesis' as a precursor of Luther's Christian conscience, which is what the Eckstein/Kähler interpretation, as well as that of the *Theologisches Wörterbuch zum Neuen Testament* amount to.<sup>85</sup> Then, I will consider the more general matter of the novelty of the paulinian use of 'syneidesis'. We will then be in a position to gain a better understanding of what he means by the term, to compare it with other New Testament occurrences of 'syneidesis', and to assess the influence of New Testament use of the term on later writers.

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<sup>82</sup> Kittsteiner (1995), 169.

<sup>83</sup> Stelzenberger (1961), 18, 34, 35, 49, 84, 94. He also quotes authors who emphasize the same thing; Kuß and Spicq for instance. See also Stelzenberger (1963b), 36: "Aber charakteristisch ist für das Neue Testament besonders Paulus eine vollständige und unabhängige Eigenprägung."

<sup>84</sup> This is in Stelzenberger (1961), 84-85.

<sup>85</sup> Stelzenberger (1989), 213, also suggests this traditional interpretation, speaking of the Jew "der streng und gesetzetreu dem Buchstaben dient".

Kittsteiner presents Eckstein's interpretation of the paulinian 'concept of conscience' (an interpretation that draws on Kähler's work) in the context of a section on Luther's interpretation of the conceptual history of the term 'conscience'. This is quite appropriate, in a way, for it is especially Martin Luther himself who interpreted Paul's writings in such a way that Paul became, in Krister Stendahl's words, 'a hero of the introspective conscience'. In an article which, as Bill DeJong remarks, "has taken its place in Pauline scholarship as one of the pivotal essays in the formation of what James D. G. Dunn has dubbed 'the new perspective on Paul'", Stendahl points out how "[e]specially in Protestant Christianity (...) the Pauline awareness of sin has been interpreted in the light of Luther's struggle with his conscience".<sup>86</sup> "Luther's inner struggles," Stendahl writes, "presuppose the developed system of Penance and Indulgence, and it is significant that his famous 95 theses take their point of departure from the problem of forgiveness of sins within the framework of Penance (...)."<sup>87</sup> In the course of the Middle Ages, "[p]enetrating self-examination reached a hitherto unknown intensity. For those who took this practice seriously (...) the pressure was great. It is as one of those – and for them – that Luther carries out his mission as a great pioneer. It is in response to *their* question, 'How can I find a gracious God?' that Paul's words about a justification in Christ by faith, and without the works of the Law, appears as the liberating and saving answer."<sup>88</sup> To someone preoccupied with the demands of the Law and burdened by a guilty conscience, Paul's words seemed to offer a deeply needed and 'graceful' solution: not legalism, not the works of the Law, but faith constitutes the road to salvation.

Stendahl offers two important objections to this interpretation: 1) It is not how Paul's writings were interpreted in the beginning. In fact, Stendahl remarks, "[i]t has always been a puzzling fact that Paul meant so relatively little for the thinking of the Church during the first 350 years of its history" – that is, until Augustine, "it seems that Paul's great insight into justification by faith was forgotten".<sup>89</sup> Only when the concrete problems Paul was addressing – problems pertaining to the relation between Jews and Gentiles, and to the status of the Torah once the Messiah had come – had lost their relevance, a new interpretation could arise. This Augustinian and Lutheran interpretation became the common (but especially the Protestant) interpretation of Paul; it held that Paul was the first to offer the solution of Christian freedom to the painfully troubled conscience. Stendahl summarizes: "Paul's argument that the Gentiles must not, and should not come to Christ *via* the [Mosaic] Law, i.e. *via* circumcision etc., has turned into

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<sup>86</sup> Stendahl (1963), 200.

<sup>87</sup> *Ibid.*, 202-203.

<sup>88</sup> *Ibid.*, 203.

<sup>89</sup> *Ibid.*, 203-204.

a statement according to which all men must come to Christ with consciences properly convicted by the Law [understood as the moral imperative as such] and its insatiable requirements for righteousness.”<sup>90</sup> 2) Not only does the traditional interpretation of Paul fail to do justice to the historical context, it also ignores the fact that Paul himself did not suffer from a troubled conscience at all. Stendahl points to Philippians 3 and Acts 9 to substantiate this claim. In both texts, there is no sign of a conscience troubled by disobedience to the law; on the contrary, Paul says he was “blameless as to righteousness – of the Law, that is”.<sup>91</sup> Stendahl also notes that “Paul never urges Jews to find in Christ the answer to the anguish of a plagued conscience”; similarly, ‘forgiveness’ “is the term for salvation which is used least of all in the Pauline writings”.<sup>92</sup> There are no signs of a troubled conscience after Paul’s (or Saul’s) conversion either. Stendahl points to Romans 9:1, 2 Corinthians 1:12 and 2 Corinthians 5:10 as passages that testify to Paul’s confidence. And in 1 Corinthians 4:4 Paul says: “ouden emauto synoida” – “I know nothing with me” (“I am conscious of no sin”).<sup>93</sup> He adds that God is the final judge, but this is not so much a sign of humility or less confidence, but rather a way of pointing out to the Corinthians that it is not *their* place to judge him. Then, finally, there is the much quoted passage from Romans 7:19: “I do not do the good I want, but the evil I do not want to do is what I do.” This has traditionally been interpreted as a classic expression of a troubled introspective conscience. But what is overlooked here, is that Paul is convinced of the rightness of his will, his intention. Moreover, Paul says: “Now if I do what I do not want, *then it is not I who do it*, but the sin which dwells in me.”<sup>94</sup> Stendahl concludes that “[t]he argument is one of acquittal of the ego, not one of utter contrition”.<sup>95</sup> Hence, when we look at the paulinian use of ‘syneidesis’, it is unlikely that we should interpret it in terms of either an oppressed or a freed conscience.

But what about the novelty of Paul’s use of ‘syneidesis’? Stelzenberger is adamant that the New Testament, and especially the paulinian, use of ‘syneidesis’ is completely novel.<sup>96</sup> His most poignant

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<sup>90</sup> *Ibid.*, 207.

<sup>91</sup> Phil. 3:6, quoted in Stendahl (1963), 201; the *New International Version* of the Bible speaks of ‘legalistic righteousness’, thereby exemplifying the traditional reading of Paul, where the Mosaic law is turned into a universal principle of legalism.

<sup>92</sup> Stendahl (1963), 202.

<sup>93</sup> *Ibid.*, 210; Cf. Stelzenberger (1961), 82-85.

<sup>94</sup> Quoted in Stendahl (1963), 212; the italics are his. Paul actually says this twice, in more or less the same words; in other verses, too, he distances himself from his sinful body.

<sup>95</sup> *Idem.*

<sup>96</sup> Pierce holds a different position, and Stelzenberger criticizes him for that; Pierce is said not to do justice to the ‘Sonderstellung und Eigenart des Terminus in der neutestamentlichen Theologie’ (Stelzenberger [1961], 25).

statement of this view, in which he does not limit himself to Paul, is the following: “Die Hülse ist antik, der Inhalt aber neu. Er hat eine völlig neue theologische Note. Syneidesis im Neuen Testament ist ein Novum. Es kann aus der Umwelt nicht adäquat erklärt werden. Es zählt zu den Begriffen, die vom Neuen Testament sehr eigenmächtig und frei von historischen Bindungen geprägt werden. Auch das Alte Testament scheidet als Quelle aus.”<sup>97</sup> From a historical point of view, it is obviously nonsense to say that anything could be created ‘free from historical connections’. Nevertheless, there is still a question as to the relative novelty of the New Testament use of ‘syneidesis’. In the above passage and elsewhere, Stelzenberger speaks of the New Testament ‘concept’ of ‘syneidesis’, as if there is *one* concept with a clearly new, Christian meaning. At the same time, however, he goes to great lengths to point out the diversity in meaning the notion has: “Der Inhalt des Wortes hat eine beachtliche Breite. Nichts wäre unsachlicher als eine einzige Richtung annehmen zu wollen.”<sup>98</sup> These two seemingly contradictory statements *can* go together, if in its various uses, ‘syneidesis’ *always* has this characteristically new element of meaning.<sup>99</sup> For Stelzenberger, the novelty of ‘syneidesis’ in the New Testament lies in its relation to God: “[B]ei Paulus ist syneidenai und syneidesis notwendig mit dem stehen vor Gott oder Gottgegenüber-sich-Befinden verbunden. Wie bei Augustinus ist es keine Bezeichnung für rein weltlichen, irdischen Inhalt. Deshalb sind Parallelen aus dem antiken Sprachgebrauch (...) für das Verständnis des Neuen Testamentes sehr aufschlußreich, aber keine bindende Erklärung. Paulus und die anderen neutestamentlichen Schriftsteller übernehmen das Wort nicht in seiner bisherigen Ur-Bedeutung, sondern verstehen es völlig anders.”<sup>100</sup> The difference between the Stoic connection between ‘conscientia’ and the divine is said to lie in the fact that in the New Testament, the connection is with a personal ‘Abba-Gott’, the father of ‘our Lord, Jesus Christ’.<sup>101</sup>

It seems to me that in this manner, virtually any word used in the New Testament can be said to have acquired a completely new meaning,

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<sup>97</sup> Stelzenberger (1961), 94. In *ibid.*, 34, 35, 84 and 85, and Stelzenberger (1963b), 36, the emphasis is on Paul.

<sup>98</sup> *Idem.*

<sup>99</sup> This is what the *Theologisches Wörterbuch zum Neuen Testament* suggests: “Paulus nimmt wie keiner vor ihm den Begriff der *συνειδησις* in umfassender Weite und Vielschichtigkeit auf. (...) Doch hat Paulus keine einheitliche Lehre von der *συνειδησις* vorgelegt. Nicht nur ist der Gewissensbegriff lediglich einer unter anderen Versuchen, den ganzen Menschen zu erfassen (...), sondern es laufen in ihm verschiedene Traditionsströme unausgeglichen nebeneinander her. Dies alles aber ist umschlossen und zusammengehalten durch das Neue, das Paulus mit dem Gewissensbegriff verbindet...” (916-917).

<sup>100</sup> Stelzenberger (1961), 85.

<sup>101</sup> *Ibid.*, 84. I would rather say that the main difference is that for Paul, ‘syneidesis’ itself is not divine.

totally unconnected to historical antecedents or context. But let us first look at the different meanings of ‘syneidesis’ Stelzenberger discerns. In 1 Peter 2:19, ‘syneidesis’ is said to stand for ‘consciousness/awareness of the God-relatedness of man’.<sup>102</sup> The passage speaks of a ‘conscience toward God’.<sup>103</sup> In Acts 23:1, ‘syneidesis’, according to Stelzenberger, should be translated as ‘awareness’ [Bewußtheit]. The German reads: “Ich bin mit völlig guter syneidesis bis zu diesem Tag vor Gott gewandelt.”<sup>104</sup> For Romans 9:1 and 2 Corinthians 1:12, Stelzenberger suggests ‘awareness as a witness’. Romans 9:1 reads: “Die Wahrheit sage ich in Christus, ich lüge nicht. Meine syneidesis bezeugt mir im pneuma hagian, daß ich große Trauer habe und mein Herz unablässigen Schmerz.”<sup>105</sup> And so Stelzenberger goes on to distinguish six other meanings: ‘inner obligation’, ‘the inner (core)’, ‘moral-religious faculty/power of judgement’, ‘conscience’, ‘the good conscience’, and ‘the bad or evil conscience’.<sup>106</sup> Given what other authors have written on the subject, and seeing Stelzenberger’s ‘evidence’ underlying all these distinctions, it seems to me that he is attempting to do what New Testament authors did not do: differentiate between all these different meanings. To be sure, there was some differentiation, and ‘syneidesis’ is sometimes qualified by ‘agathos’ (good), ‘kathara’ (clear), ‘aproskopos’ (stained), or otherwise. It is also true that meaning depends on context, and that one can often discern different elements of meaning in the use of a term. But Stelzenberger, trying to pin-point the meaning of ‘syneidesis’ in all these passages, goes too far.<sup>107</sup> Schnackenburg presents a nuanced interpretation of the notion, that makes

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<sup>102</sup> Ibid., 45. The German ‘Gottbezogenheit’ says a bit more than God-relatedness – it is also ‘man’s bearing on God’. Stelzenberger writes ‘Bewußtheit’, not ‘Bewußtsein’, probably to draw attention to the activity of being aware.

<sup>103</sup> That, at least, is the translation in the King James Version that is connected with an online *New Testament Greek Lexicon*, based on Thayer’s and Smith’s Bible Dictionary, the large Kittel, and the Theological Dictionary of the New Testament, which can be found on <http://www.translatum.gr/dics/gr1.htm>.

<sup>104</sup> Stelzenberger (1961), 49; the KJV reads ‘in all good conscience’.

<sup>105</sup> Ibid., 51. The KJV: “I say the truth in Christ, I lie not, my conscience also bearing me witness in the Holy Ghost...”

<sup>106</sup> Ibid., 55-56, 56-68, 68-78, 78-82, 82-90, 90-94. With respect to ‘conscience’ I should note that Stelzenberger here means ‘conscience in the authentic and strict sense of the word’ (note the combination ‘authentic *and* strict’). He spends a lot of time emphasizing that ‘syneidesis’ is so often incorrectly translated as ‘Gewissen’, saying things like “Syneidesis ist hier bestimmt nicht ‘Gewissen’” (57) and “Von ‘Gewissen’ ist gar keine Rede” (73); see also 26, 42, 50, 62, 72. This is quite tiresome, and actually, given his narrow definition of ‘Gewissen’, it is rather unsurprising that it is hardly ever what New Testament authors meant.

<sup>107</sup> Cf. Jewett’s criticism of Stelzenberger, as referred to by Bosman (2003), 192. I subscribe to Bosman’s remark that “[m]any difficulties of Paul’s use of the word *συνειδησις* are solved by allowing for sufficient semantic flexibility while not abandoning the quest for a single meaning” (193).

clear that it is not so much the notion itself that is so very novel in meaning, but rather the context that changes the status of ‘syneidesis’.<sup>108</sup> Paul is said to have built a bridge from Judaic to Hellenistic thought.<sup>109</sup> In Schnackenburg’s view, Paul’s notion of ‘syneidesis’ is, firstly, the result of his combination of Jewish and popular Hellenistic thought; secondly, for Paul, ‘syneidesis’ is informed and guided by the Christian value of ‘Love’; thirdly, it is limited by God’s Judgement.<sup>110</sup> ‘Syneidesis’ is an “innermenschliche Instanz, die das Verhalten des Menschen mit positivem oder negativem Urteil ins Bewußtsein hebt. Das Wissen um Gut und Böse ist dabei vorausgesetzt.”<sup>111</sup> It is “eine innere spontane Reaktion, eine innermenschliche Instanz (...) die dem Menschen als Richtungsweiser zu Bewußtsein kommt”.<sup>112</sup> Such ‘definitions’ do not sound very different from pre-Christian or non-Christian meanings of ‘syneidesis’.<sup>113</sup>

It is mainly in the non-paulinian books of the New Testament that ‘syneidesis’ is accompanied by attributes (‘good’, ‘stained’, et cetera).<sup>114</sup> In so far as this is new for the New Testament, it is not primarily paulinian. We also find a ‘clear’ ‘syneidos’ in Philo’s work, and Flavius Josephus (Jewish historian, ca. A.D. 37 – ca. 100) speaks of both a good and a bad ‘syneidos’.<sup>115</sup> Bosman points out that ‘syneidesis’ in Paul’s writings does have a twofold (or neutral) nature; it may condemn, but it may also applaud.<sup>116</sup>

Reviewing the above, I would say that New Testament authors, Paul included, adopted a popular Hellenistic notion, the meaning of which was influenced by their Jewish background. They did not obviously change the meaning of ‘syneidesis’, nor did they use the word in a very different way. When Paul speaks of the weak ‘syneidesis’ of those newly converted Christians who dare not eat sacrificial meat, even though, for Christians, that

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<sup>108</sup> Bosman rightly distinguishes between ‘intrinsic lexical meaning’ and ‘contextual meaning’; I would say that the latter makes the greatest difference here.

<sup>109</sup> Schnackenburg (1988), 56-57.

<sup>110</sup> *Ibid.*, 58.

<sup>111</sup> *Ibid.*, 54.

<sup>112</sup> *Ibid.*, 56.

<sup>113</sup> See Stelzenberger (1961), 27-36. Pierce (1955), 54 and 111, who is (not unjustly) accused by Stelzenberger of turning ‘syneidesis’ too much into a moral notion, defines ‘syneidesis’ as “the pain suffered by man, as man, and therefore as a creature involved in the order of things, when, by his acts completed or initiated, he transgresses the moral limits of his nature”; it is “the internal counterpart and complement of *the wrath*. It is the painful consciousness that a man has of his own sins, past or, if present, begun in the past. It is *of God* in that it is the reaction of man’s nature, as created, and so delimited, by God, against moral transgressions of its bounds.”

<sup>114</sup> Cf. Schnackenburg (1988), 57; M. Dibelius and H. Conzelmann, *Die Pastoralbriefe*, Tübingen, 1955, referred to in Stelzenberger (1961), 40-41.

<sup>115</sup> Schnackenburg (1988), 50; *Theologisches Wörterbuch zum Neuen Testament*, 909-910.

<sup>116</sup> Bosman (2003), 271.

should be unproblematic, ‘syneidesis’ conveys the experience of a concerned awareness of one’s own actions as being sinful.<sup>117</sup> Part of one’s consciousness splits itself from the rest of one’s person, bearing witness and causing unease. ‘Syneidesis’ needs to be informed by the right ‘gnosis’ (knowledge), but even if (in another person) it is not, it should still be respected.<sup>118</sup> Those with a strong ‘syneidesis’ should take care not to offend the weaker ‘syneidesis’ of others, for that would destroy it, and with it the piety of the weaker brothers. Stelzenberger emphasizes the connection between ‘syneidesis’ and ‘pistis’ (faith and piety), which in my view however does not uniquely change the meaning of ‘syneidesis’, but is rather in line with it. ‘Syneidesis’ is an awareness of who one is, what one does, how one lives, and (even more importantly) of who one strives to be, what one intends to do, and how one tries to live, that arises from a contrast or a deeply felt convergence with one’s idea of who one *should* be, what one *should* do, and how one *should* live. Piety is very much a part of that; ‘syneidesis’ relates to a moral-religious (mode of) consciousness. The famous passage from Romans 2:14-15 does not give us a totally different use of ‘syneidesis’, even if Stelzenberger would say that in this case it is the ‘real’ conscience that is referred to, whereas in the Corinthians passages it is the moral-religious power or faculty of judgement. The passage reads:

“**14** (Indeed, when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law, **15** since they show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts now accusing, now even defending them.)”<sup>119</sup>

In this passage, too, ‘syneidesis’ (here translated as ‘conscience’) conveys the experience of a concerned reflective consciousness, an awareness that does not coincide with themselves, even if it is their own, and even if the standard by which their thoughts judge them is written on their own hearts. The author of Hebrews (9:9, 9:14, 10:2, 10:22) speaks mostly of the cleansing of the conscience; ‘syneidesis’ is primarily associated with sin, but also with (in)sincerity

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<sup>117</sup> 1 Corinthians 8:7, 8:10, 8:12, 10:25, 10:27-29.

<sup>118</sup> I do *not* mean to say that Paul thought that the objectively erroneous conscience is subjectively binding. Bosman points out that Paul did not express himself “on the validity or invalidity of the weak or erring *συνειδησις*”. He did believe that ‘syneidesis’ has no direct access to ‘aletheia’; hence, its judgement is provisional.

<sup>119</sup> This translation is from the New International Version of the Bible. Schnackenburg (1988), 53, points out that ‘by nature’ should not be taken as a reference to a ‘lex naturalis’ in Stoic fashion. Paul does not speak of all pagans, but of some; he uses the Greek ‘phusei’ in the sense of ‘in line with their nature’ or ‘from themselves’ (the way we would say ‘naturally’). Cf. Potts (1980), 64-65.

“[L]et us draw near to God with a sincere heart in full assurance of faith, having our hearts sprinkled to cleanse us from a guilty conscience and having our bodies washed with pure water.”<sup>120</sup>

Again, this is not radically different from other uses of ‘syneidesis’. 2 Corinthians 1:12 reads:

“Now this is our boast: Our conscience testifies that we have conducted ourselves in the world, and especially in our relations with you, in the holiness and sincerity that are from God.”

And 2 Timothy 1:3:

“I thank God, whom I serve, as my forefathers did, with a clear conscience, as night and day I constantly remember you in my prayers.”

‘Syneidesis’ (conscience) in all these passages expresses a similar awareness as in the other Corinthians passages, and in Romans 2:15, but with greater emphasis on sincerity, on the purity of one’s own intentions. This fits in very well with the connection between ‘syneidesis’ and ‘pistis’.<sup>121</sup>

Finally, some remarks concerning compactness and differentiation: ‘syneidesis’ is a more differentiated notion than heart; it has fewer connotations, even if it still has many, but what is lost in meaning is gained in precision. ‘Syneidesis’ is still a more compact notion than the English ‘conscience’ or the German ‘Gewissen’.<sup>122</sup> It is less compact than heart, and in the New Testament it is used alongside, sometimes in connection with, ‘kardia’. Stelzenberger quotes Paul Feine: “Der Tätigkeit des Herzens verwandt ist die des Gewissens (syneidesis). Denn dasselbe begleitet die Stimme des Herzens (...), es kann befleckt werden (...) oder lauter und rein

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<sup>120</sup> Hebrews 10:22.

<sup>121</sup> Cf. Stelzenberger (1961), 65 and 93, especially his reference (on page 65) to Ed. Güder, who “deutet (...) ‘gutes Gewissen’ nicht bloß als Sündenlosigkeit, sondern als das ernste Streben Christus nachzufolgen.” (Ed. Güder, “Erörterungen über die Lehre vom Gewissen nach der Schrift”, in *Theologische Studien und Kritiken*, Vol. 30, 1857, 245-296, i.c. 288-191.)

<sup>122</sup> Cf. Stelzenberger (1963b), 34: “Wertgefühl und Gewissen sind mit einbegriffen.” He also makes the slightly ridiculous remark here, that in cultures where a word for ‘conscience’ fails, the word ‘heart’ is often used ‘as a replacement’ – as if the people in question scratched the back of their heads, saying to each other: “We obviously lack the word ‘conscience’; what shall we use to replace it?” More sensible is that he speaks of the word ‘heart’ as the ‘Sammelpunkt ihrer Empfindungen’; this goes some way towards the idea of ‘symbollein’, and the symbolic expression of experiences.



sein.”<sup>123</sup> He also refers to Langenberg, who discusses ‘conscience’ under the lemma ‘heart’: “Synesis ist ‘das Bewußtsein, das als Mitwisser oder Zeuge auftritt’. ‘Es ist das geistige Vermögen des Herzens, sich selbst zu objektivieren’ (277), auch sittliche Urteilsfähigkeit, gefühlsmäßige Reaktion des Herzens gegen das Normwidrige und Wissen oder Erkennen des sogenannten besseren Ich.”<sup>124</sup> Spicq sees ‘synesis’ as a function of ‘nous’ (mind).<sup>125</sup> All these interpretations suggest that ‘synesis’ pertains to a more limited part of our anthropology than the term ‘heart’ – hence that it is a more precise notion. Both ‘heart’ (whether in the Old or in the New Testament, or elsewhere) and ‘synesis’ are sometimes accompanied by adjectives like ‘good’, ‘bad’, or ‘clean’. These are differentiations within the notions of ‘heart’ and ‘synesis’; for the latter, such attributes occur in the first century B.C., and more often in the first century A.D. So this is a time of differentiation. But importantly, it is not a time of philosophical or theological reflection on conscience; the differentiation comes about more spontaneously.<sup>126</sup> A related point to take note of is that ‘synesis’ is not by far a purely indicative notion, as Stelzenberger seems to think.<sup>127</sup> The term is still primarily a symbolic expression of a certain class of experiences. At the same time, it seems to have been a more limited symbol than both the older ‘heart’ and (for instance) the seventeenth- or eighteenth-century ‘conscience’, with its connotation of a divine faculty.<sup>128</sup> Arguably the most important differentiation that occurs in the New Testament, especially in the pauline writings, is that between ‘synesis’ and God. Like Philo, though even more clearly, and unlike Cicero or Seneca (who will be discussed in the following section), Paul does not consider conscience to be divine; rather, its temporary judgement will be superseded by God’s judgement.<sup>129</sup>

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<sup>123</sup> Stelzenberger (1961), 38; the quotation is from Paul Feine, *Theologie des Neuen Testaments*, Berlin, 1953, 258.

<sup>124</sup> *Ibid.*, 24; he (disapprovingly) quotes from and refers to Heinrich Langenberg, *Biblische Begriffskonkordanz*, Metzingen, 1954, 273-281.

<sup>125</sup> *Ibid.*, 25; the reference is to C. Spicq, *Les épîtres pastorales*, (*Études biblique*, Vol. 32), Paris, 1947, 29-38, i.c. 29.

<sup>126</sup> Stelzenberger (1989), 193: “Er [Paulus] bringt eine ausführliche Gewissenslehre” is nonsense.

<sup>127</sup> He also tends to use reifying expressions like ‘die Sache’, and even ‘das Ding’, when speaking of conscience; see for instance: Stelzenberger (1963b), 19; Stelzenberger (1989), 206.

<sup>128</sup> Stelzenberger (1963b), 22-23, rightly points out that the Greeks and Romans used other words besides ‘synesis’ and ‘conscientia’ to express what we would express with ‘conscience’ (‘Gewissen’, ‘geweten’); for instance ‘nous’ (Latin ‘mens’), and even ‘eunous’ (‘eu’ = good).

<sup>129</sup> Cf. Schockenhoff (2003), chapter 2.4: “Das Vermächtnis des Paulus”. Schockenhoff writes that for Paulus, conscience is “die prüfende Instanz im Menschen, die ihm die Übereinstimmung seines Handelns mit dem Gesetz anzeigt oder die ihn des Widerspruchs überführt, in den er durch sein praktisches Tun zu ihm gerät”

#### 2.2.3.4. Evaluation

Philo and Paul (and other New Testament authors) have much in common. Bosman provides a helpful overview of the main linguistic and conceptual developments, which brings together the main points of the foregoing subsections, and points out some interesting connections between them.

First of all, Philo and Paul both use substantive forms ('syneidos' and 'syneidesis', respectively) with relative frequency. Bosman points out that 'syneidesis' "originally served as a substitute for the form *συνοιδα εμαυτω* [*synoida emautoi* – there should be an *ι* under the *ω*]. For this reason, it was initially required to qualify the substantive by means of objective genitives or adjectives in order to convey the same semantic load (...). (...) However, when the substantives are used without any qualification (...) a novel possibility of usage presents itself. The substantive gets divorced from the subject of the verb and becomes a second 'knowing' subject alongside that of the subject of the verb. (...) [I]t becomes something within the individual that 'knows with him' that he has done something wrong." At this point, Bosman, says, one might speak of the 'birth of conscience'.<sup>130</sup> So the use of the substantive goes together with a 'solidification' of conscience into an inner entity. It becomes "a permanent component of the soul". As a result, "its basically negative character becomes something of a problem as it cannot be both permanent and restricted to a negative role at the same time". Hence, it "must eventually become neutral".<sup>131</sup> We have seen this happen in the New Testament; Bosman sees a beginning of it in Philo.<sup>132</sup>

'Syneidesis' being a neutral term, it is not surprising that the 'parresia' topos shows itself differently in Paul's writings than in Philo's. I have mentioned the inhibiting effect of the activity of 'syneidos' in Philo's work; with Paul, we have seen that 'syneidesis' led to 'boasting', to the opposite of inhibited speech: he 'knew nothing with himself'.

"To 'know with'", Bosman says, "must be a rational ability. Not surprisingly, therefore, the *συνοιδα* word group from the start belongs to the sphere of reason." Against the background of the Hellenistic concern for inner harmony (which will also figure in the next section), the presence of 'syneidos' or 'syneidesis' as a permanent component of the soul is a potentially disturbing (and therefore already a disturbing) presence; inner turmoil can only be avoided by living a pious and virtuous life.<sup>133</sup> In Philo's

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(81). But conscience is not the final test: "Statt im Gewissen die Präsenz der Gottheit im menschlichen Geist zu rühmen, so dass dessen Selbstbeurteilung mit dem göttlichen Richterspruch faktisch in eins fällt, unterstellt Paulus sein eigenes Gewissen nochmals der Überprüfung durch eine andere Instanz, deren Urteil im eschatologischen Endgericht Gottes ergeht." (86)

<sup>130</sup> Bosman (2003), 277.

<sup>131</sup> Ibid., 278. Cf. Schockenhoff (2003), 82.

<sup>132</sup> Ibid., 183-184.

<sup>133</sup> Ibid., 279.

case, this was part of an ascent towards the spiritual; with Paul, the emphasis lies on the right conduct in the eyes of God, with the prospect of salvation.

‘Syneidos’ and ‘syneidesis’, functioning as inner entities, are particularly concerned with “behaviour of which no one other than the transgressor is aware”. This coincides with the Hellenistic turn of attention away from the evaluation of external actions, towards internal dispositions and intentions. The ‘syneidos’ and ‘syneidesis’ are for a large part concerned with the convergence or divergence between knowledge of what one should do, and one’s inner motivations.<sup>134</sup>

‘Syneidos’ and ‘syneidesis’ are not themselves divine. “Philo’s *συνειδος* is indeed closely related to the *λογος* as a divine aspect, but nowhere does it become the voice of God. To Paul, the *συνειδησις* is never more than a purely anthropological term.”<sup>135</sup> This means that neither ‘syneidos’ nor ‘syneidesis’ is infallible. Both have to work with the available knowledge, and human knowledge or wisdom is not equal to divine knowledge or wisdom. That does not mean that ‘syneidos’ and ‘syneidesis’ are not that important, after all. Their importance is preserved through its primary concern with piety, intentions, and the individual’s inner disposition.<sup>136</sup> “Inner harmony,” Bosman writes about Philo, “is not in itself the ethical *τελος*”; “impiety and ungodliness are the most objectionable of all transgressions”.<sup>137</sup> The same is true for Paul, as is evident from his concern for the ‘syneidesis’ of the weaker brothers. Whether the knowledge available to the ‘syneidos’ or ‘syneidesis’ is indeed true knowledge or not, they are manifestations of ultimate concern.

I have already emphasized the symbolic aspect of both the Philonic and the New Testament use of ‘syneidos’ and ‘syneidesis’, respectively. The ‘solidification’ resulting from the use of these substantives does not contradict this. In fact, the opposite is true: it allows conscience to become a more powerful symbol, while *at the same time* the danger of reification and of mistaking the term for an indicative notion increases. It is also important to emphasize that neither Philo nor Paul or any other New Testament writer expounded a doctrine of conscience. Bosman speaks of the ‘fluidity of the concept’, by which he means that its meaning is not yet fixed, as it is a concept in evolution.<sup>138</sup> Let us see how the ‘concept’ – but at this stage I would still prefer: the symbol – evolved with the Roman Stoics.

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<sup>134</sup> Ibid., 280. We have seen that this is not always the case, however. In the case of those with a weak ‘syneidesis’, for instance, ‘syneidesis’ was concerned with the supposed badness of their actions.

<sup>135</sup> Ibid., 283.

<sup>136</sup> Philo connects the ‘syneidos’ with intentions, words, and deeds, by teaching that the ‘syneidos’ becomes operative “in the case of disharmony between the respective functions of ‘heart, mouth, and hands’” (Bosman [2003], 173).

<sup>137</sup> Bosman (2003), 189.

<sup>138</sup> Ibid., 176, 183. Bosman means something else, to be sure, than I do with my ‘fluid concept’ (see chapter 8).

#### 2.2.4. 'Conscientia'

The Latin 'conscientia' is a translation, even (more or less) a transliteration of the Greek 'syneidesis'. There are two main sources for the term: the Roman Stoics and the Latin Bible. The Church Fathers drew on both these sources for their use of the term. This section will deal first with the Roman Stoics, and subsequently with the Church Fathers. The biblical use of 'syneidesis' has already been discussed, so I will not treat the biblical use of 'conscientia' separately. References to any relevant differences will be incorporated in the aforementioned two subsections.

##### 2.2.4.1. *The Roman Stoics*

Stoic philosophy is often divided into three periods: the early Stoics, the middle, and the later Stoics. Marcus Tullius Cicero (106 – 43 B.C.) and Lucius Annaeus Seneca (ca. 2 B.C. – A.D. 65) belong to the late middle period and the later period, respectively – Cicero being not so much a 'pure' Stoic, but rather an Eclectic, taking up elements from various strands of thought, in good Hellenistic fashion. I will confine myself to these authors, on the one hand because it is simply impossible to discuss everyone, and on the other hand because the term 'conscientia' occurs quite frequently in their writings, and because they exerted a considerable influence on medieval thought.<sup>139</sup> Stoics generally held that the cosmos is divinely and rationally ordered, and that virtue and happiness are attainable by participating in the ordering principle, the 'logos', and by conforming internally to this principle. This entailed a thorough-going independence with regard to what happened to one, and the emotions which external happenings tend to trigger or evoke. This 'apatheia' of the Stoics lingers on in our time in the form of expressions like 'remaining Stoic' to something, or under certain circumstances.<sup>140</sup> This attitude was connected with a strong belief in and acceptance of divine providence – as is popularly well-known from the *Meditations* of Marcus Aurelius (121-180). Stoic philosophy in general, and Roman Stoicism in particular, is characterized by a strong emphasis on practical philosophy and ethics (as a part of practical philosophy). Copleston begins his section on 'the Stoic ethic' by quoting a description of philosophy given by Seneca, which exemplifies "the importance of the ethical part of philosophy for the Stoics":

"Philosophia nihil aliud est quam recta vivendi ratio vel honeste vivendi scientia vel ars rectae vitae agenda. non errabimus, si dixerimus

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<sup>139</sup> Störmer-Caysa (1995), 8; Marietta (1970), 184 (with regard to the frequent use of 'conscientia' by Cicero and Seneca).

<sup>140</sup> Besides 'apatheia', the Stoics also spoke of 'euthymia' (spiritual peace and well-being) and 'eudaimonia'; Cf. Hallie (1967).

philosophiam esse legem bene honesteque vivendi, et qui dixerit illam regulam vitae, suum illi nomen reddidit.”<sup>141</sup>

A famous Stoic maxim was ‘Live according to nature’.<sup>142</sup> To live in accordance with natural law, with the ordering principle called the ‘logos’, with the divine will, and with man’s essential nature, was one and the same thing. To live like that was man’s ethical end. It is also the definition of virtue, which for the Stoics was the only thing that was truly good; what was neither virtue nor vice was indifferent (‘adiaphoron’).<sup>143</sup> The cardinal virtues were held to be: moral insight or practical wisdom (‘phronesis’), courage, self-control or temperance, and justice. They are connected; to have one of them meant to have them all. The wise, virtuous man, is someone who has reached a high level of autonomy – but this is not so much external but internal autonomy, by which I mean that he had very strong self-control, in particular control over his passions and emotions, and a high level of independence from external influences. He was not autonomous in the sense that he could simply decide what was ‘law’ for himself and by himself and act accordingly. An important Stoic term in this respect is ‘autarkeia’, meaning ‘self-sufficiency’ and ‘contentment with one’s lot’.<sup>144</sup> To conclude this very brief summary of what Stoic ethics was about, I should mention the concept of ‘oikeosis’, described by Copleston as ‘the fundamental instinct or tendency of self-preservation or self-love’.<sup>145</sup> This principle is initially

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<sup>141</sup> Copleston (1962), 138; he quotes from Seneca, *Fragment* 17. [“Philosophy is nothing else than the ‘recta ratio’ (right reason, right rule) of living, or the knowledge of living honourably, or the art of conducting one’s life in the right manner. We will not err, if we were to say that philosophy is the law of living good and honourably, and he who would state that law to be the rule of (his) life, has borne its name.” (My translation.)] ‘Recta ratio’ is a translation of the Greek ‘orthos logos’, which is defined by Eisler’s *Wörterbuch der philosophischen Begriffe* as ‘rechte, das Richtige treffende, sittliche Vernunft’; Eisler’s dictionary further says: “Die Stoiker verstehen darunter den »eingeborenen, sittlichen Tact« (L. STEIN, Psychol. d. Stoa II, 264). Dieser orthos Logos ist zugleich Kriterium der Wahrheit (s. d.) und Weltgesetz. CICERO erklärt: »Recta ratio - quae cum sit lex, lege quoque consociati homines cum diis putandi sumus« (De leg. I, 7, I, 2).” Cf. Seneca (1918), the following passage from letter 16: “Philosophy (...) is a matter, not of words, but of facts. (...) It molds and constructs the soul; it orders our life, guides our conduct, shows us what we should do and what we should leave undone; it sits at the helm and directs our course as we waver amid uncertainties. Without it, no one can live fearlessly or in peace of mind. Countless things that happen every hour call for advice; and such advice is to be sought in philosophy.”

<sup>142</sup> Copleston (1962), 139.

<sup>143</sup> *Ibid.*, 141. ‘Adiaphora’ (indifferent things) will figure in part II of this book, in relation to freedom of conscience and freedom of religion.

<sup>144</sup> Hallie (1967).

<sup>145</sup> Copleston (1962), 143-144.

confined to oneself, or primarily concerned with the self, but it extends (or can extend) first to those closest to one, and secondly to strangers, and finally to all mankind. To reach this extension requires an effort, but it is part of the ethical ideal – as it still is in the works of Adam Smith, the semi-Stoic Scottish Enlightenment philosopher. In Seneca’s thought, man’s self-sufficiency was qualified by the obligation to help our fellow-men.<sup>146</sup>

It is against this background that we must situate Cicero’s and Seneca’s use of the term ‘conscientia’. The basic meaning of the term is that of an awareness that accompanies one’s own actions or those of others; Marietta speaks of ‘shared knowledge’ and ‘consciousness’.<sup>147</sup> We find it with such a meaning in the work of Cicero and Seneca. Their emphasis on the practical life, however, manifests itself in a more ethical use of ‘conscientia’, to mean an evaluative awareness of (particularly) one’s own actions. “Gewissen ist also zunehmend nur noch das Bewußtsein vom eigenen Tun in moralischer Hinsicht, kaum noch das vom Tun der anderen.”<sup>148</sup> Given the fact that ‘syneidesis’ is virtually absent from the work of Stoic philosophers, it is most likely that the Roman Stoics derived their use of ‘conscientia’ from the same source from which Greek Hellenism took ‘syneidesis’: the colloquial language, and popular psychology.<sup>149</sup> Marietta concludes: “It seems likely that Latin use of *conscientia* reflects the popular use of *syneidesis*. It is not established that there is anything distinctively Stoic about this use.” The Roman Stoic use of ‘conscientia’ is, at any rate, different from the New Testament use of ‘syneidesis’ in at least one important respect: while for New Testament authors, ‘syneidesis’ was not divine, but constituted the provisional judgement that awaited the final Judgement by God, the Stoic ‘conscientia’ was held to be a divine element implanted in the soul, the ‘voice of God’ in man.<sup>150</sup> The meaning of ‘conscientia’ was also influenced by the Stoic philosophy in which it was embedded. Kittsteiner writes: “Bei Cicero and Seneca wird das Gewissen zur Grundlage einer individuellen Sittlichkeit, die gegen Lob und Tadel der Gesellschaft weitgehend immun ist.”<sup>151</sup> Conscience plays a role in enabling people to gain the required independence from the external world, from external goods like the praise of others. Virtue

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<sup>146</sup> Ibid., 175.

<sup>147</sup> Marietta (1970), 184.

<sup>148</sup> Störmer-Caysa (1995), 9; she includes a reference to Reiner, (1974), 577.

<sup>149</sup> Some authors hold that ‘conscientia’ was a much broader term than ‘syneidesis’, with far more emphasis on the aspect of knowing, whereas the Greek word mostly conveyed the meaning of judging oneself, and expressed feelings of guilt; Baylor (1977), 24; Pierce strongly advocates this view in his *Conscience in the New Testament*. Stelzenberger (1961), 25, however, criticizes him for reading too much morality into ‘syneidesis’.

<sup>150</sup> The great importance of this difference will become clear in 2.2.5.

<sup>151</sup> Kittsteiner (1995), 168.

(as we see with Philo) is its own reward; it is so through the good conscience. Cicero writes:

“...sed tamen nullum theatrum virtuti conscientia maius est.”<sup>152</sup>

Cicero, then, places ‘conscientia’ in the context of Stoic natural law theory and ethics. Conscience, like a moral guardian, approves of our actions insofar as they correspond to natural law, the divine order of things; it disapproves when they do not. But whether our actions are good or evil depends on our intentions. The Stoics turn their attention toward the individual and his motives. Hence, they stress the value of self-observation and self-judging.<sup>153</sup> “[W]ie die Pythagoreer und Epikuräer,” Kittsteiner writes, “so empfiehlt auch der Stoiker die allabendliche Gewissensprüfung.”<sup>154</sup> ‘Conscientia’ is not the only relevant expression in this context: “Was wir heute (...) mit Gewissen bezeichnen, ist in der Antike auch eingekleidet in Wendungen wie Inneres des Menschen, Innenwelt, Gesinnung, innere Einstellung, persönliche geheime Angelegenheit, reine Hände, reiner Sinn usw. Bei den Griechen wird nous und bei den Römern mens in diesem Sinne verwendet. (...) Cicero (...) bezeichnet die menschliche mens als göttlichen Zeugen und Göttlichstes in uns.”<sup>155</sup> It is also used in more general senses than that of ‘conscience’.<sup>156</sup>

Cicero speaks of conscience as a witness.<sup>157</sup> ‘Conscientia’ is an infallible witness and guide; it has precedence over the often erring opinions of others.<sup>158</sup> For Cicero, ‘conscientia’ (in its broadly moral sense) is both the standard which each individual is measured against, the witness to the approximation to or the divergence from this standard, and the peaceful or painful judging consciousness of one’s righteousness or depravity. That it is also the standard is clear from Cicero’s statement that every man has an

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<sup>152</sup> Cicero (2005), II, chapter 26, paragraph 64. [“...yet there is no greater theater for virtue than the conscience.”]

<sup>153</sup> Knight (1969), 3.

<sup>154</sup> Kittsteiner (1995), 168.

<sup>155</sup> Stelzenberger (1963b), 22-23. He refers to Marcus Tullius Cicero, *De Officiis*, III, 10, 44: “mentem suam, qua nihil homini dedit Deus ipse divinius”.

<sup>156</sup> *Ibid.*, 25, 27.

<sup>157</sup> *Ibid.*, 28: “Die conscientia,” Stelzenberger writes, “ist uns von den unsterblichen Göttern als unentreißbarer Zeuge guter Ratschläge und unserer Taten gegeben. Unter ihrer Führung leben wir ohne Furcht und höchst ehrenhaft.” The reference is to Marcus Tullius Cicero, *Pro Cluentio*, 25.

<sup>158</sup> *Idem*; Marcus Tullius Cicero, *De Finibus*, II, 71: “...ut nostram stabilem conscientiam contemnamus, aliorum errantem opinionem aucupemur” [“...so that we depreciate our secure conscience, if we (would) pursue the erring opinions of others”].

‘unwritten, inborn law’ in himself.<sup>159</sup> Through conscience (though not exclusively through conscience) man participates in the ‘logos’. This is expressed by the term ‘logos spermatikos’ (the seed of the logos), which is implanted in every animated being.<sup>160</sup> Cicero was also aware of the physiognomy of conscience, stating that “morderi est melius conscientia” [“to be bitten is better than (the sting of/a bad) conscience”].<sup>161</sup> Stelzenberger notes that both Cicero and Seneca mention phenomena like blushing, turning pale, confusion, and shame as signs of ‘conscientia’.<sup>162</sup> That Cicero also recognized the phenomenon of the good conscience was already mentioned. ‘Conscientia’ is said to comfort – a remark that we must understand in the context of the wise man’s attempt to become independent from external goods, including the comforting words of other people.<sup>163</sup>

“Neben dem römischen Rhetor”, Stelzenberger says, “hat der Stoiker Seneca die ausgebildetste Lehre vom Gewissen.” He calls his letters a true ‘Fundgrube’ (a rich source or mine) for the term ‘conscientia’, though he warns that it does not always refer to the moral conscience – in other words: ‘conscientia’ does not always serve as an expression of moral-religious experiences.<sup>164</sup> With respect to the symbol of conscience, one of the most important sites in Seneca’s work is in number 41 of the *Moral Epistles*:

“[1] Facis rem optimam et tibi salutarem si, ut scribis, perseveras ire ad bonam mentem, quam stultum est optare cum possis a te impetrare. Non sunt ad caelum elevandae manus nec exorandus aedituus ut nos ad aurem simulacri, quasi magis exaudiri possimus, admittat: prope est a te deus, tecum est, intus est. [2] Ita dico, Lucili: sacer intra nos spiritus sedet, malorum bonorumque nostrorum observator et custos; hic prout a nobis tractatus est, ita nos ipse tractat. Bonus vero vir sine deo nemo est: an potest aliquis supra fortunam nisi ab illo adiutus exurgere? Ille dat consilia magna et erecta. In unoquoque virorum bonorum [quis deus incertum est] habitat deus.”<sup>165</sup>

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<sup>159</sup> Ibid., 29; the Latin phrase is ‘non scripta, sed nata lex’.

<sup>160</sup> The German Wikipedia entry for ‘logos’ translates ‘logos spermatikos’ as ‘Seelenfünklein’, thereby illustrating how this Stoic idea was taken up in later Christian thought, that is, as more or less identical with the ‘scintilla conscientiae’ (spark of conscience), which was one way in which ‘synderesis’ was understood.

<sup>161</sup> Stelzenberger (1963b), 32; Cicero (2005), IV, chapter 20, 45. Stelzenberger mentions several other passages relating to feelings of guilt.

<sup>162</sup> Ibid., 56.

<sup>163</sup> Ibid., 33-34; Marcus Tullius Cicero, *Epistularum ad Familiares*, VI, 10b: “...consolatione non utebar, quod ex multis audiebam, quam fortiter sapienterque ferres iniuriam temporum quamque te vehementer consolaretur conscientia factorum et consiliorum tuorum.”

<sup>164</sup> Ibid., 211.

<sup>165</sup> Lucius Annaeus Seneca, *Epistularum Moralium ad Lucilium Liber*, IV, 41 (<http://www.thelatinlibrary.com/sen.html>).



“You are doing an excellent thing, one which will be wholesome for you, if, as you write me, you are persisting in your effort to attain sound understanding; it is foolish to pray for this when you can acquire it from yourself. We do not need to uplift our hands towards heaven, or to beg the keeper of a temple to let us approach his idol’s ear, as if in this way our prayers were more likely to be heard. God is near you, he is with you, he is within you. This is what I mean, Lucilius: a holy spirit indwells within us, one who marks our good and bad deeds, and is our guardian. As we treat this spirit, so are we treated by it. Indeed, no man can be good without the help of God. Can one rise superior to fortune unless God helps him to rise? He it is that gives noble and upright counsel. In each good man ‘a god doth dwell, but what god know we not?’”<sup>166</sup>

There is one word in the above passage that I would translate differently: ‘mens’. Gummere translates ‘bonam mentem’ by ‘sound understanding’. In view of Stelzenberger’s remark concerning the Stoic use of ‘nous’ and ‘mens’, the German ‘Gesinnung’ (inner disposition) would be a better translation. Like the New Testament ‘syneidesis’, it seems to pertain to the right disposition, to sincerity also, in doing the right thing.

Again, this passage illustrates the Stoic concern with independence from external goods, and from fortune generally. God does not count as an external good; hence there is no contradiction in saying that man is dependent on God for his goodness. God is an internal good; he guides us from within. If we do good, the holy spirit within us will treat us well; that is, we will experience a peaceful conscience, which is all the reward we need for our virtue. If we treat this spirit badly by our evil actions, so it will treat us badly; it will pain us with guilt and remorse.<sup>167</sup> While the word ‘conscience’ (‘conscientia’) is absent from this passage from Seneca’s letters to his friend Lucilius, the three core elements of the symbol of conscience as outlined in the previous chapter are all overtly present.<sup>168</sup>

In this phrase:

“Nihil prodest inclusam esse conscientiam; patemus Deo”,

Seneca opposes the elements of intimacy and the witness: intimacy, in the form of secrecy, is no use, for God sees everything.<sup>169</sup> He uses various

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<sup>166</sup> This translation is taken from Seneca (1918).

<sup>167</sup> Recall from 1.5.1 how Calvin said that conscience is harassed by the sinner *and* harasses the sinner.

<sup>168</sup> Whether they correspond with equally strong experiences is another matter; the letter reflects upon the subject, it does not immediately express his own feelings.

<sup>169</sup> Lucius Annaeus Seneca, *Fragment* 24; quoted in Stelzenberger (1963b), 22, 28. [“It is of no avail that the conscience is enclosed; we lie open before God.”]

expressions for the bad and the good conscience.<sup>170</sup> We also find them in the *Proverbs* ascribed to Seneca (but not written by him).<sup>171</sup> Stelzenberger notes that ‘conscientia optimaе mentis’ in Cicero, like ‘bona conscientia’ in Seneca, means ‘reines inneres Bewußtsein, ehrliche Gesinnung, reines Inneres’ and so on, rather than ‘unser moralisch gutes Gewissen’. This is in line with what I said above concerning the larger passage from Seneca’s *Moral Epistles*. Unlike Stelzenberger, however, I would not consider it to mean something other than conscience; rather, I would refuse to narrow conscience down to one particular meaning, to one aspect of the symbol of conscience.

Stoic thought was an importance influence on the works of later Christian authors. Stelzenberger points out the direct link between Seneca and Lactantius (ca. 250 – ca. 325).<sup>172</sup> Other church fathers were also influenced by Cicero and Seneca.<sup>173</sup> The importance of Stoic thought for scholastic discussions of conscience will be discussed in 2.2.5. An important contribution of Stoic – or should we say ‘Hellenistic’? – moral thought to later thought on the subject lies in its egalitarianism.<sup>174</sup> Everyone can be good, no matter what people think of him or her; goodness does not depend on the judgement of others. Your conscience will tell you whether you are virtuous or not; its peace and its silence will speak volumes. Stelzenberger

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<sup>170</sup> Stelzenberger (1963b), 32, note 89; for Cicero, note 88. In *De Tranquillitate Animi*, Seneca once speaks of ‘bona conscientia’, but he does not devote as much attention to it, we may note, as the Greek philosopher Plutarch in his treatise of the same name. Plutarch (ca. 46 – ca. 120) explains that the consciousness of our own evil-doings oppresses as and leaves behind in the soul what in the body would be a wound: remorse that always bleeds and causes pain; thinking can take away other troubles, but only enhances this one. Nothing contributes so much to tranquillity and peace in life as a soul that is clean of evil deeds and thoughts. From such a soul flow good deeds, joyfully done.

<sup>171</sup> For instance: proverb 65: “Mala conscientia saepe tuta est, secreta numquam.” [“The bad conscience is often safe, but never secure.”]; and 133: “Bonus fruitur bona conscientia.” [“The good (man) enjoys a good conscience.”].

<sup>172</sup> Stelzenberger (1989), 213.

<sup>173</sup> Stelzenberger (1959), 17. Kittsteiner (1995), 169, points out the similarities between Origen on the one hand and Epictetus, Marcus Aurelius, and Seneca on the other hand. Voegelin (1997), 131, says that Cicero “has been quoted extensively by the Latin church fathers, and the quotations have been requoted to a degree that the Ciceronian formulas (it would in most cases be too much to call them theories) have become a permanent fixture in Western political theory”.

<sup>174</sup> I include this suggestion that we should perhaps say ‘Hellenistic thought’ because of the Eclecticism of both Cicero and Seneca, though of the former in particular. Cicero gathered up elements of thought from wherever he could find them. He is chastised by Voegelin for his lack of originality, and Copleston remarks on his unoriginality as well (Voegelin [1997], 131; Copleston [1962], 163: “The writings of Cicero are scarcely to be called original in content, as Cicero himself openly admits – “ἀπογοῦσα *sunt*, *minore labore fiunt*, *verba tantum affero*, *quibus abundo*.”)

quotes Cicero: “Mein inneres Bewußtsein [conscientia] gilt mir mehr als das Gerede der Menschen.” He says that “*Seneca* nennt den tugendhaft, der sich um das Urteil der Menge nicht kümmert und die conscientia höher stellt als die fama.”<sup>175</sup> In his review of Reydams-Schils’ *The Roman Stoics*, Siep Stuurman writes: “Reydams-Schils highlights the egalitarian thrust of Stoicism: putting the nobility of the soul above nobility of birth, and positing an equal capacity for reason in both men and women, the Roman Stoics transcended the conventional morality of their society.”<sup>176</sup> This must not too easily be taken as an inspiration for conscientious objection. Though both radical puritans and radical Enlightenment thinkers based their revolutionary conscience on similar egalitarian ideas and ideals, Roman Stoic thought could never sanction such revolutionary action. They emphasized *internal* freedom, not external freedom; whether you were guilty or not may have been for your conscience to say, whether you could and would be punished or not lay in the hands of others. ‘Autarkeia’ did not entail the freedom to act publicly according to your conscience, even if it meant transgressing the law; rather, it entailed the freedom not to care about what other people thought of you.<sup>177</sup> Nevertheless, with their emphasis on interiority, Roman Stoic writers exerted a great influence on Augustine and other Christian authors.

The Roman Stoics did not develop a ‘theory’ of conscience; rather, they took up a popular notion, and helped spread the use of the term ‘conscientia’. The meaning of the term became more clearly ethical (in a broad sense of the term), even though it was often used otherwise. The ‘good conscience’ occurs more often in their writings than in earlier periods, which reflects both their optimistic disposition and their ethical ideal. No further differentiation is evident. The symbol of conscience gains in moral-religious power through its incorporation in the Stoic philosophy of the divine ‘logos’; its symbolic power is far greater than that of ‘syneidesis’ in the New Testament, which is at the end of the day a subsidiary symbol – subservient to God, rather than godly.

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<sup>175</sup> Stelzenberger (1963b), 46; he quotes from Marcus Tullius Cicero, *Ad Atticum*, XII, 28, 2: “mea mihi conscientia pluris est quam omnium sermo”, from Seneca, *Epistulae Morales*, 81, 20: “Nemo mihi videtur pluris aestimare virtutem, nemo illi magis esse devotus quam qui boni viri famam perdidit ne conscientiam perderet.”, from Seneca, *De Beneficiis*, IV, 21, 5, and from Seneca, *De vita beata*, XX, 4: “Nihil opinionis causa, omnia conscientiae faciam.” [“I do nothing because of (the) opinions (of others), everything for conscience sake.”]

<sup>176</sup> Stuurman (2005).

<sup>177</sup> Copleston (1962), 134: “...cosmological determinism is modified by their insistence on interior freedom, in the sense that a man can alter his judgment on events and his attitude towards events, seeing them and welcoming them as the expression of ‘God’s Will.’ In this sense man is free.”

#### 2.2.4.2. *The Church Fathers*

Early Christian writers drew their inspiration from two sources: classical antiquity and the Bible. Stoic and biblical elements were blended together in the elaboration of the meaning of ‘syneidesis’ and ‘conscientia’. Eastern Church Fathers concerned themselves with the notion of ‘syneidesis’, and tended towards a more speculative, religious interpretation of this New Testament notion. In the West, the emphasis lay on the practical side, and ‘syneidesis’ and ‘conscientia’ are much more often understood in a moral-religious sense. Stelzenberger speaks of a ‘jüdisch-liturgische’ and a ‘disciplinary-moral’ interpretation of Acts 15:20-29 (a text which concerns regulations for converted pagans, the former being the eastern, the latter the western interpretation).<sup>178</sup>

The frequency with which the term ‘conscientia’ occurs in the writings of the (western) Church Fathers is striking. It testifies to the importance of the term, but it is also the result of its great width of application.<sup>179</sup> Stelzenberger distinguishes between a large number of senses of the term, under five headings: ‘knowledge’, ‘consciousness/reflection/power of judgement’, ‘inner/inner disposition’, ‘Wertgefühl’ (moral sense, a sense of value), and ‘conscience’. In the latter meaning, we find it especially with Origen (185-254) in the East, and with Augustine (354-430) in the West, so Stelzenberger states.<sup>180</sup> Though I will not adopt Stelzenberger’s categorization, it is true that there is a plethora of different senses and different shades of meaning behind the single term ‘conscientia’. Nevertheless, the western Church Fathers draw ‘conscientia’ in the moral-religious sphere, and expressions in this sphere abound. The ‘neutral’ meaning of ‘conscientia’ as ‘knowledge’, which stands out most clearly as an independent use of the term, is abandoned by Augustine, with whom ‘conscientia’ loses any ‘profane’ meaning.<sup>181</sup> The other senses Stelzenberger distinguishes are in fact often difficult to separate from each other. The abundance with which the word ‘conscientia’ occurs in the writings of Church Fathers, it should be noted, is related to the fact that the Latin translation of the Bible often gives ‘conscientia’ where there was no ‘syneidesis’ – both in moral and non-moral senses.<sup>182</sup> It was also with Jerome’s Latin translation of the Bible (the *Vulgate*) that “conscientia became the entrenched Latin equivalent for *συνειδησις*”.<sup>183</sup>

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<sup>178</sup> Stelzenberger (1963b), 65.

<sup>179</sup> *Ibid.*, 64.

<sup>180</sup> *Ibid.*, 53.

<sup>181</sup> Stelzenberger (1959), 27: “Für Augustinus scheidet conscientia in der Bedeutung von Kenntnis oder Wissen um rein weltliche Dinge (gleich cognitio) überhaupt aus. (...) Der Begriff verliert seine profane Verwendung.”

<sup>182</sup> Stelzenberger (1963b), *Syneidesis, Conscientia, Gewissen*, 45.

<sup>183</sup> Bosman (2003), 17.

Conscience becomes incorporated and encapsulated in Christian doctrine (which is not yet dogma). Kittsteiner notes that the interpretation of Ezekiel's vision by Origen and Jerome (ca. 340/342-420) completes the incorporation of the doctrine of the Fall in a Stoic conception of conscience. Timothy Potts summarizes the vision and Jerome's interpretation: "In his vision, Ezekiel saw four living creatures coming out of a fiery cloud. Each of them had the form of a man, but with four faces; the front face was human, the right face that of a lion, the left that of an ox, and the back face that of an eagle. Jerome interprets the four faces as representing the structure of the human soul, correlating the first three faces with Plato's tripartite division in the *Republic* (4, 436B-441B). (...) Jerome's suggestion is that the soul has a quadripartite structure, with conscience as a fourth potentiality irreducible to any of the other three."<sup>184</sup> This fourth potentiality is represented by the eagle's face. "Der Adler aber, der alle überflügelt, deutet auf eine von diesen Seelenteilen [the rational, the appetitive, and the emotional] unabhängige Kraft, auf eine oberste Gewissensfunktion, die auch in dem Sünder Kain nicht hat ausgelöscht werden können. Damit ist die Lehre vom Sündenfall in die stoische Gewissenskonzeption eingebaut; aus dem 'Gott in uns' ist ein geschwächtes Vermögen geworden, das der Gnade bedarf, zugleich aber sich als rudimentäre ursprüngliche Anlage erhalten hat."<sup>185</sup> Another good example is afforded by whom we might call Augustine's teacher, Ambrosius (339-397).<sup>186</sup> In his *Exposition of the Christian Faith*, even though he does not use the word, he gives conscience a place in the Christian doctrine of salvation:

"As for me, Lord Jesu, though I am conscious within myself of great sin, yet will I say: "I have not denied Thee; Thou mayest pardon the infirmity of my flesh. My transgression I confess; my sin I deny not. If Thou wilt Thou canst make me clean. For this saying, the leper obtained his request. Enter not, I pray, into judgment with Thy servant. I ask, not that Thou mayest judge, but that Thou mayest forgive."<sup>187</sup>

Henry Chadwick also mentions this as one of the themes discussed by the Church Fathers; he enumerates: "[d]ie Heilung des siechen oder tribulierten Gewissens, die Notwendigkeit der Selbstprüfung vor dem Tribunal der Seele (das Thema, über das Augustin immer wieder predigte); die gewissenhaften Beteuerungen des Märtyrers, der seine Integrität gegen die Anfechtungen des Kompromittierens verteidigt; die sittliche Verantwortung vor Gott". But he continues: "*Aber* – selbst bei Augustin wird man keine Theorie sittlicher

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<sup>184</sup> Potts (1980), 6-8.

<sup>185</sup> Kittsteiner (1995), 169-170.

<sup>186</sup> The Wikipedia states that Augustine "owes more to him than to any other writer except Paul" (<http://en.wikipedia.org/wiki/Ambrose>).

<sup>187</sup> Ambrose (2004), Book II, chapter 13, 122.

Entscheidung finden, keine Analyse des Phänomens Gewissen, keine Diskussion seiner metaphysischer Natur. Nur in *einer* Hinsicht ist Augustin von Bedeutung für unser Thema und seine Geschichte. Er legte viel größeres Gewicht auf die subjektive Absicht als auf den Faktor, der den sittlichen Wert einer Handlung bestimmt. Das heißt, er verstärkte den Nachdruck auf die innere Gesinnung im Gegensatz zur äußeren Handlung.<sup>188</sup>

The influence of Augustine, bishop of Hippo in North-Africa, can hardly be underestimated. With regard to conscience, it lay not just in his use of the term and his interpretation of previous uses, but also, and perhaps more importantly, in his practice of self-observation. His *Confessiones* were the beginning of a new literary genre. The Stoics, as we have seen, emphasized the importance of daily self-scrutinization, but Augustine took this practice to a new level in writing his confessions. He set an example by this elaborate exposition and expression of a troubled moral-religious consciousness. Rather than on the level of symbolization and doctrine, Augustine's main contribution to the European mentality lay in his promotion of the value and importance of the *experience* of conscience. Stelzenberger draws attention to Augustine's often troubled conscience, and his expressions of guilt. He also emphasizes the great importance of Augustine's 'conscientia-Lehre' for later times, saying that it becomes the dominant interpretation of conscience.<sup>189</sup> Kittsteiner, however, rightly points out the importance of Jerome's *Commentary on Ezechiel* for scholastic discussions of conscience.<sup>190</sup> Central to Augustine's introspective conscience was that it was a conscience 'coram Deo', 'before God'. This has a ring to it that is quite similar to Seneca's 'patemus Deo', though Stelzenberger hastens to stress that 'coram Deo' "ist nicht wie bei den Stoikern Formel der vagen Annahme eines höheren Wesens oder Ausdruck einer monistischen oder pantheistischen Schau. Sie bedingt den Glauben an den persönlichen Vater-Gott und seinen Sohn Jesus Christus."<sup>191</sup> The 'God-relatedness' of the Augustinian conscience is expressed in various ways; God is said to be present in conscience as an 'inspector', and Augustine says that 'conscientia' is 'in spiritu sancto'.<sup>192</sup> But most important for Augustine's conception of conscience is the idea that man can find God by introspection: 'in te ipsum redi' ('turn [back] into yourself'), for God is 'interior intimo meo' – the element of intimacy could hardly be more pronounced. Schockenhoff sees as characteristic for the Augustinian conception of conscience the polarity between the Biblical 'Höre Israel' and the idea of the proximity of God's word to the heart of the righteous on the one hand, and the Greek 'gnothi seauton' ('know yourself'):

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<sup>188</sup> Chadwick (1974), 17.

<sup>189</sup> Stelzenberger (1963b), 55.

<sup>190</sup> Kittsteiner (1995), 170.

<sup>191</sup> Stelzenberger (1959), 36-37.

<sup>192</sup> *Ibid.*, 29-30, 41.

“Weil ich Gott in Innersten meiner selbst entdecke, bin ich mir dort am nächsten, wo ich Gott nahe bin; weil er *interior intimo meo* zugegen ist, sehe ich mich selbst am klarsten, wo ich mich seinem Blick geöffnet habe.”<sup>193</sup>

In Augustine’s work, as in that of other Church Fathers, the idea of a ‘lex nata’ or ‘lex naturalis’, an innate and inner law, figures prominently.<sup>194</sup> Some take it most directly from the Stoics; others from the New Testament, especially Romans 2:14.<sup>195</sup> In Origen’s case, it goes back to Paul.<sup>196</sup> Importantly, Origen tried to differentiate ‘conscientia’ from ‘cor’ (heart) and ‘anima’ (soul), and concluded that ‘conscientia’ is more than either of them, namely divine ‘pneuma’.<sup>197</sup> Every author had his own way of expressing the idea of an innate law; John Chrysostom (347-407), for instance, explained the Tree of Knowledge of Good and Evil (Genesis 3:3) as the ‘syneidos’ that is implanted in us. It is both natural law, incorruptible criterion, and court of law. He also speaks of it as the voice of God.<sup>198</sup> Stelzenberger notes the importance of John of Damascus (676-749) for later (scholastic) theology. He said that “our ‘syneidesis’ is the law of our ‘nous’”. It knows and ‘wills’ the Law (or Command) of God. “Diese Prägung”, Stelzenberger says, “ist bedeutungsvoll für die intellektualistische Auffassung des Wertbewußtseins. Die lateinische Übersetzung (*conscientia est lex intellectus nostri*) bahnt das an. In dieser Form geht die Glosse in die Theologie der Folgezeit besonders die Früh- und Hochscholastik ein.”<sup>199</sup> ‘Conscientia’ is understood as an internal voice that imposes an obligation on people in accordance with external laws. What is importance about this doctrine, Stelzenberger says, is that the internally acknowledged obligation is identified with objective norms, with divine and human law. “Für die Theologie des Mittelalters wird damit der Intellekt als Träger des Wertbewußtseins festgelegt. Auch bahnt sich eine Entwicklung an, die subjektive Werte mehr und mehr durch objektive Gesetze ersetzt.”<sup>200</sup>

This development must be understood against the background of the western emphasis on what Stelzenberger called the moral-disciplinary

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<sup>193</sup> Schockenhoff (2003), 96-97; more generally 3.1.

<sup>194</sup> For Augustine, see *ibid.*, 109-123.

<sup>195</sup> Recall Schnackenburg’s remark that this is not a correct interpretation of the passage; it is in fact a ‘Stoic’ interpretation.

<sup>196</sup> Stelzenberger (1963b), 51; Stelzenberger (1963a), 42-45.

<sup>197</sup> *Ibid.*, 61. The differentiation here takes the form of an attempt to define the place of ‘conscientia’ in a conceptual network in which ‘cor’ and ‘anima’ are the most important neighbouring concepts.

<sup>198</sup> *Ibid.*, 52. Stelzenberger notes that “[d]ie alt- und neu-testamentlichen Berichte von der *Stimme Gottes* aus der Wolke (...), die Worte Jesu bei der Erscheinung vor Damaskus (...) und auch Rom 2, 14f werden als innere Stimme Gottes ausgelegt”. So an immanentization of the voice of God occurs in such interpretations.

<sup>199</sup> *Ibid.*, 62.

<sup>200</sup> *Idem.*

aspect of conscience. In my terminology, one could say that the emphasis lay on the element of authority. This was supported by the use that was made of the element of the witness: it was mainly used to instil caution, if not fear. Both eastern and western Church Fathers knew the joy and the ‘high’ of a good conscience, but the latter were indisputably the champions of the bad conscience. Expressions for the torments of conscience abound. Ambrosius, who studied Philo and Origen, knew the ‘conscientiae verbera’ (beatings of the conscience), and said that “non est tranquillitas mentis ubi animus exagitur obnoxiae stimulis conscientiae” [“there is no peace of mind where the soul is tormented by the stings of a guilty conscience”].<sup>201</sup> Augustine’s preoccupation with his own guilty conscience is well-known. In book X of his *Confessiones*, he speaks to God about the carnal desires that sometimes get hold of him while he sleeps, and in desperation pleads to know whether he should say it is really himself that does or allows these things or not; sometimes, while he sleeps, he knows that it is wrong, but on other occasions he cannot stop it. When he awakes, he does return to a peaceful conscience, Augustine writes, for he knows that the distance between his waking and his sleeping self is so great as to allow the conclusion that he did not do it, but that it was somehow done *in* him. Other authors, too, like Cicero and Seneca, wrote about the physical ‘symptoms’ of both the good and the bad conscience; in the latter case a reddening face, bad dreams, and so on.<sup>202</sup> The most important symbolism taken from the Old Testament is that of the gnawing worm and the tormenting fire.<sup>203</sup>

While the Church Fathers did not turn what they inherited from classical authors and the Bible into solid doctrine, but rather contributed to a much more widespread use of the term ‘conscientia’ in a great variety of senses, some more solid tendencies stand out. In the West, ‘conscientia’ became a morally charged term, with an important place in Christian theology; its use tended towards the disciplinary, which is clear from the emphasis on the bad conscience and its torments, as well as from the increasing stress on the objective laws which it ought to convey. The emphasis on the ‘inner’, effected most clearly by Augustine, brought both a certain freedom and its opposite. Insofar as man’s inner eludes external control, the necessity of discipline increases – that is, from the perspective of an organization that has established itself and aims at consolidating and extending its power and influence. The abundance of expressions relating to the torments of conscience constitutes the first attempts at the control of conscience.

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<sup>201</sup> Ibid., 54; quoted by Stelzenberger from the *Corpus Scriptorum Ecclesiasticorum Latinorum*, 64, p. 353, 13, and 62, p. 384, 16.

<sup>202</sup> Recall also the ‘parresia’ topos in Philo and Paul.

<sup>203</sup> Ibid., 58.



No systematic examination of conscience is extant from the patristic period, but in the East the eighth-century monk John Saba the Elder devoted one chapter of his *Doctrina* to the topic of ‘syneidesis’, and in the West, according to Stelzenberger, Isidore of Seville (560-636) gave the first impulse towards systematization. It is appropriate to end this section with a passage from his work, as it comprises in itself the most characteristic elements of the patristic use of ‘conscientia’.<sup>204</sup> The ‘impulse towards systematization’ Stelzenberger alludes to is found in Book II of the *Sententiae*.

“XXVI. De conscientia.

26.1. Humana conditio dum diversis vitiositatibus mentem conturbat, etiam ante poenas gehennae per inconditum animae appetitum iam poenas conscientiae patitur.

26.2. Omnia fugire poterit homo praeter cor suum.<sup>205</sup> Non enim potest a se quisque recedere. Ubi cumque enim abierit reatus sui conscientia illum non derelinquit.

26.3-4. Quamvis humana iudicia subterfugiat omnis qui male agit, iudicium tamen conscientiae suae effugire non potest. Nam etsi aliis celat quod egit, sibi tamen celare non potest, qui plene novit malum esse quod gessit. Duplex fit ergo in eo iudicium, quia et hic suae conscientiae reatu punitur, et illuc perpetuali poena damnatur. Abyssus enim abyssum invocare est de iudicio suae conscientiae ire ad iudicium damnationis perpetuae. In voce cataractarum, id est in praedicatione sanctorum.”<sup>206</sup>

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<sup>204</sup> An interesting passage, besides the one below, can also be found in book 30 of Isidore’s *De Mendacio* [‘Concerning the lie/illusion’]: “30.9-10. Sicut bene sibi conscius non metuit alienae linguae convicium, ita et qui laudatur ab alio non debet errorem alienae laudis adtendere; sed magis unusquisque testimonium conscientiae suae quaerat, cui plus ipse praesens est quam ille qui eum laudat. Opus enim suum unusquisque probet, ut ait apostolus, et tunc in seipso quisque gloriam habebit, id est occulte in sua conscientia, non palam in aliena lingua.” This passage reminds us of the Stoic attitude towards the praise of others in comparison to the praise of our own ‘conscientia’. In the same work, 31.8, Isidore speaks of “Deus tamen, qui conscientiae testis est” [“God (...), who is the witness of conscience”].

<sup>205</sup> I have taken ‘fugire’ to mean ‘fugere’ (as in the next paragraph ‘effugire’); either it is an early medieval variation, or it is a confusion resulting from the fact that ‘fugio’ is the normal first-personal form of ‘fugere’ in the indicative praesens.

<sup>206</sup> Isidore of Seville (1998), Book II, chapter 26. For easier reading, I have changed every ‘u’ that should be read as ‘v’ into the latter, and the other way around.

“XXVI. On conscience.

26.1. While the human condition confuses the mind with diverse depravities, it [the mind] suffers the punishments of conscience even before the punishments of hell through the confused striving of the soul.<sup>207</sup>

26.2. A man will be able to flee from anything except his own heart. For one cannot depart from oneself. Because wherever he may have gone the conscience of his sin does not leave him.

26.3-4. Even if everyone who did wrong were to escape human judgements, they would not be able to escape the judgement of their conscience.<sup>208</sup> For although he could hide from others what he had done, he cannot hide it from himself, who has fully recognized that what he did was wrong. So a double judgement is passed on him, because he is punished for his sin here and now by his conscience, and in the beyond he is sentenced to eternal punishment. For is it not said: Hell invokes hell with the voice of waterfalls. Because for hell to invoke hell is to go from the judgement of one's conscience to the judgement of eternal damnation. With the voice of waterfalls means: in the proclamations of the saints.”<sup>209</sup>

Stelzenberger's commentary on the above passage from Isidore's *Sententiae* is as follows: “Schon diese schmale Skizze deutet an, daß conscientia nicht bloß moralischer Ausdruck ist. Am Anfang und Ende stehen dogmatische Aussagen.”<sup>210</sup> While Origen, Augustine, and Jerome exert the greatest influence on medieval thought, Isidore's brief excursion concerning conscience forms an appropriate ending for this section. It shows what patristic thought had led to by the time the Middle Ages had begun: conscience had become quite a solid moral-religious entity, something that made itself felt in horrible ways. The symbolic aspect of the language of conscience is surely not gone, but it is doubtful to what extent it was *seen* as symbolic. The passage from Isidore's *Sententiae* seems to suggest the gruesome reality of hell and conscience, rather than their symbolic nature as expressions of experiences that defy description.

### 2.3. CONCLUDING REMARKS

What we have seen in this chapter, if it allows itself to be summarized in a few sentences, is that the symbol of conscience stabilized itself over time in its conjunction with particular vehicles of expression: ‘syneidesis’ and other

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<sup>207</sup> ‘Humana conditio’ is in fact ‘the human creature’, but I take ‘conditio’ to mean ‘condicio’, as the confusion of the two is quite common, and it seems to be what was intended here.

<sup>208</sup> Literally, it says “he would not be able to escape the judgement of his conscience”.

<sup>209</sup> ‘In voce’ can also mean: ‘in the words (of)’.

<sup>210</sup> Stelzenberger (1963b), 64.

members of the 'synoida' group, and 'conscientia'. This development probably coincided with an increasing familiarity of ordinary people with experiences of conscience; at any rate, people became increasingly familiar with the forerunners of our term 'conscience'. Such familiarity is likely to result in pressure on the symbolic nature of the terms, but it is hard to determine to what extent this was so. Conscience became part of theological and philosophical treatises when the terms 'syneidesis' and 'conscientia' were taken from folk psychology by Roman Stoics and Church Fathers. It was then also underway to become an object of reflection. In the first half of the Middle Ages, conscience was taken up into Christian dogma. The process of differentiation and doctrinalization sped up; we can see the beginning of a process that would lead to a plethora of concepts and definitions of conscience. But the major differentiating step occurred in the twelfth century, when conscience was split up into 'synderesis' and 'conscientia'; this is where the following chapter begins.

### 3. Between symbol and doctrine (2): differentiation and doctrinalization – the religious conscience before and after the Reformation

#### 3.1. INTRODUCTION

In the second half of the Middle Ages, a differentiation occurred in the ‘concept’ of conscience that was to an enormous influence in its own time, as well as on later reflection on the subject. Two words, ‘synderesis’ and ‘conscientia’, were now used, where at first only the latter was available. This determined the character of scholastic discussions of conscience, but its influence extends far beyond these. Luther developed his own ‘concept’ of conscience in reaction to scholasticism. The medieval distinction between ‘synderesis’ and ‘conscientia’ lurks in the background of Protestant casuistry. Most importantly, this differentiation may be taken as the starting-point of the increase in and diversification of concepts of conscience. Afterwards, lines that were until then held together begin to diverge, hooking up to different elements of scholastic thought.

Other important developments occurred in the same period: we can witness the solidification of conscience into something one ‘has’, or ‘possesses’. Also, we see that the Latin terms are translated into English, German, and other languages. In combination with the mysticism and spirituality that blossomed alongside scholasticism, and found its way into the Reformation, this development sparked a revival of symbolism of conscience. At the same time, however, we see that in English and German what I have called ‘external differentiation’ occurred: the moral phenomenon of conscience was separated from the morally neutral phenomenon of consciousness.

The structure of the chapter is as follows: 3.2 continues the discussion of the development from compactness to differentiation begun in chapter 2; I attend to the origins of the distinction between ‘synderesis’ and ‘conscientia’ (3.2.1), and to the meanings of these terms in scholastic philosophy (3.2.2). Because the scholastic conceptualization of conscience constitutes such an important turning-point, I start with a review of doctrinalization until scholastic times (3.2.3) The first half of the title of 3.3 is ‘From symbol to doctrine – and back?’, because of the revival of symbolic language of conscience inspired by humanism and mysticism. In European history until then, scholastic thought represents the peak, even a breakthrough, of doctrinal thought. Did the simultaneous revival of symbolism mean that it was also the end of the process of doctrinalization? Obviously not. A century or two later, the popular metaphors of (inner) light were used to back up unshakable convictions of righteousness. In 3.3 I deal with the following subjects: the translation of ‘conscientia’ (3.3.1), mysticism and

spirituality (3.3.2), the influence of Stoicism (3.3.3), and, finally, conscience in Protestant casuistry (3.3.4). 3.4 contains some concluding remarks and looks ahead to chapter 4.

## 3.2. FROM COMPACTNESS TO DIFFERENTIATION (2)

### 3.2.1. Origins of the distinction between ‘conscientia’ and ‘synderesis’

Medieval (scholastic) discussions of conscience revolved around the terms ‘conscientia’ and ‘synderesis’.<sup>1</sup> At least on the ‘flat’ level of terminology, then, an innovation occurred. It is my contention that the differentiation of conscience into ‘synderesis’ and ‘conscientia’ constituted a critical step in the transition from the symbolic to the doctrinal level. In this form, the step was probably taken by accident – it was a misstep. It occurred for the first time probably around the middle of the twelfth century, when a novice or monk made a mistake in copying Jerome’s Ezekiel commentary, writing ‘synteresin’ or ‘synteresis’ instead of ‘syneidesis’.<sup>2</sup> This word may hark back to the late Greek ‘synterein’ (‘to keep [safe]’, ‘to watch over [oneself]’), which makes some sense in connection with the function of the eagle in Ezekiel’s vision, as interpreted by Jerome.<sup>3</sup> Potts remarks that ‘synteresis’ “most commonly means ‘preservation’ or ‘maintenance’, as e.g. in God’s conservation of his creation. But the ‘*syn-*’ prefix can also have a reflexive force, which gives it the sense of observing or watching over oneself, and, perhaps, thereby preserving oneself from wrongdoing. Jerome’s quotation from I Corinthians suggests that this is how he understood it, for the verb which St Paul used in that passage was ‘*tereō*’ (‘keep sound’ in the translation).”<sup>4</sup>

Stoker writes: “Wissen wir nicht genau, wie das Wort *συντηρησις* entstanden ist, wo Hieronymus es her hat, wie es seine moralische Prägung gewann, so ist und bleibt es ein künstlich geformtes Wort, welches den Scolasticis sehr brauchbare Dienste geliefert hat.”<sup>5</sup> Störmer-Caysa notes that

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<sup>1</sup> Originally ‘synteresin’ or ‘synteresis’, but ‘synderesis’ became the more common variant. Cf. Störmer-Caysa (1995), 13; Potts (1980), 10-11, who points out that Greek ‘*ντ*’ is pronounced ‘nd’.

<sup>2</sup> The most detailed explanation of what happened is in Störmer-Caysa (1995), 11-13. It was originally written in Greek (*συντηρησις*), and later transliterated into Latin.

<sup>3</sup> In the literature, the ‘scribal slip’ and the ‘syntereo’-hypothesis are often presented as competing explanations, whereas they combine very well. The ‘syntereo’-hypothesis supports the likelihood of this scribal error; had the term been virtually unknown, it is most unlikely that it would have been written instead of ‘syneidesis’. As to the other (background-)explanations put forward in what follows: it may very well have been that the eager acceptance of ‘synderesis’ was overdetermined.

<sup>4</sup> Potts (1980), 10. Kittsteiner (1995), 170, also connects it with “die Vorstellung des ‘Bewahrens’ bei Paulus, I. Thess. 5 v. 23”.

<sup>5</sup> Stoker (1925), 27.

“die *synderesis* als bloßes synonym zur *conscientia* zu verstehen wäre bei weitem das Einfachste gewesen; das Einfachste trat aber nicht ein, denn die begriffliche Verdopplung war hochwillkommen. So ist die *synderesis* zwar spontan entstanden, aber wäre sie es nicht, so hätte man einen eigenen Begriff prägen, sie erfinden müssen.”<sup>6</sup> Bosman speaks of the ‘fortuitous distinction between *conscientia* and *sunderesis*’ and says that it “should be regarded as an essential part of the historical process of refinement”.<sup>7</sup> Whether ‘synderesis’ came into scholastic thought as the result of a mistake or not, its ready adoption was no mistake. Hence, reasons for the grateful acceptance of the term should be considered.

Potts places the acceptance of the term in the context of an apparent inconsistency in Jerome, that medieval scholars wished to resolve. While Jerome, on the one hand, speaks of the ‘scintilla conscientiae’ (‘spark of conscience’) “which was not even extinguished in the breast of Cain”, he also says, in Potts’ words, “that very wicked people *do* cease to have any conscience”.<sup>8</sup> With the new distinction available, it would be possible to say that one part, the ‘synderesis’, can never be extinguished, while the other part, ‘conscientia’, *can* perish. The distinction also fitted the distinction between ‘higher’ and ‘lower’ reason, which went back to Augustine’s distinction between wisdom and knowledge, the first of which pertains to ‘eternal things’ and is hence “to be preferred to the latter”.<sup>9</sup> Bosman confines himself to the remark that “[a]ccidental or not, the *synteresis* filled an epistemological void that is already apparent in Philo’s conception of the *συνειδοῦς* and its relationship to the moral code and human rationality”, which ‘to a lesser extent’ is also true for Paul.<sup>10</sup> Kittsteiner places the distinction between ‘synderesis’ and ‘conscientia’ in the wake of the incorporation of the Christian doctrine of the Fall in the stoic conception of conscience. It seems to me that it makes sense to pursue this line of thought, in the sense that we seek an underlying reason for the ready acceptance of the term ‘synderesis’ in a sought ‘rapprochement’ between Christian and classical (including Stoic) thought. Stelzenberger points out that the notion of the ‘terein’ (‘conservare’) of the ‘logos’ occurs in Stoic philosophy, and that the notion of the ‘pneumatic fire’ as well as the idea of the divine, ruling part of reason, both of which would be taken up in speculation concerning ‘synderesis’, are Stoic in origin. Origen adopted the idea of the divine pneumatic fire, which he

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<sup>6</sup> Störmer-Caysa (1995), 14.

<sup>7</sup> Bosman (2003), 283. See also McGrade, Kilcullen, and Kempshall (2001), 169-170: “The misunderstanding was a fruitful one, however, for it stimulated finely discriminating discussions of moral knowledge and motivation.”

<sup>8</sup> Potts (1980), 10.

<sup>9</sup> Ibid., 89; translation of excerpts from Book 12 of *On the Trinity*. Cf. *ibid.*, 83: Augustine, *On the Trinity*, Book 12.12: “For man is made in the image of God not in the form of his body but in his rational mind...”

<sup>10</sup> Bosman (2003), 18, note 10.

called 'scintilla in anima', and he connects fire ('ignis') with conscience. And so Stelzenberger adduces many more examples of pre-scholastic thought that might have 'prepared' the scholastics for the differentiation of conscience into 'synderesis' and 'conscientia'.<sup>11</sup>

In my view, it would make sense to broaden the perspective a bit more than Stelzenberger does, and look at the double inheritance medieval authors begot from classical and Stoic thought on the one hand, and Philonic and New Testament writing on the other. One of the greatest differences between them was that for Philo and New Testament authors, 'syneidos' and 'syneidesis' were not divine, while for the Stoics 'conscientia' was 'vox Dei' and 'God within you'. The tension which was the result is evident in Augustine, who on the one hand places 'conscientia' 'coram Deo' (which means that he distinguishes conscience and God), whereas on the other hand he also accepts the idea of conscience as the voice of God.<sup>12</sup> The differentiation between 'conscientia' and 'synderesis' allowed for the reconciliation of the Stoic and the Pauline inheritance, for the resolution of the tension between the divine and the human conscience, by assigning each of them their own place. This suggestion aligns the acceptance of 'synderesis' next to 'conscientia' with the general purpose of scholastic philosophy: to render compatible and to integrate Christian and classical thought. It was now possible to say that 'synderesis' was divine, inextinguishable, and infallible, while 'conscientia' was human, extinguishable, and fallible. Thus, the Pauline conscience that awaits the final Judgement is wedded to the Stoic 'vox Dei', and the tension in patristic thought is resolved.

There is also a more historical explanation for the readiness with which the distinction between 'conscientia' and 'synderesis' was accepted. While Schockenhoff merely says that the refined Thomistic concept of conscience 'presupposed a sharper conceptual distinction', Störmer-Caysa explains the need for this sharper distinction. She relates it to the fourth Lateran council of 1215, which imposed the duty of at least one-yearly auricular confession on all Christians. "Um zu beichten, mußte man aber wissen, was Sünde sei; und nicht alle Fälle waren so eindeutig wie Mord oder Ehebruch."<sup>13</sup> Priests in particular needed to be instructed, so as to be able to aid their confessants in probing their conscience. Catalogues of sins were used, but they were not sufficient. "Sie blieben vor der Vielfalt möglicher Handlungskonstellationen immer zurück."<sup>14</sup> What was needed was new theory, that would answer a host of questions, like: what is conscience? how sure is its decision? can it be sinful to obey your conscience? Störmer-Caysa notes that Abelard (1079-1142) held that there is no sin except against the

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<sup>11</sup> Stelzenberger (1963b), 81ff.

<sup>12</sup> Stelzenberger (1959), 116ff; Schockenhoff (2003), 100.

<sup>13</sup> Störmer-Caysa (1995), 14.

<sup>14</sup> Idem.

conscience.<sup>15</sup> What if an action was said to be sinful, while the actor was not aware of its sinful nature? Would he not doubt the power of his conscience, cease to educate it, and stop confiding in it? “So paradoxal es auch klingt: Die Entwicklung einer personalen Gewissenskonzeption, die in die neuzeitliche Subjektivität und Individualität mündet, hatte ihre Wurzeln im Versuch der Kirche, sich der Köpfe und Herzen gründlicher zu bemächtigen. Das Gewissen,” Störmer-Caysa states in Foucauldian manner, “ist in einer Kultur mit Beichtpflicht die Instanz der totalen Kontrolle; es macht den gläsernen Menschen aus.”<sup>16</sup> The internal differentiation of conscience into ‘synderesis’ and ‘conscientia’ was, besides other things, an instrument in the attempt to gain control over the minds of the people: “Die ausgearbeitete Lehre vom Gewissen sollte in erster Linie die mentale Bindung des einzelnen klarstellen, nicht seine Freiheit.”<sup>17</sup>

With respect to the idea that the word ‘synderesis’ was simply *needed* at that time, I would finally like to suggest that this makes sense in view of the fact that language lags behind experience. The word ‘conscientia’ alone could no longer bear the strain caused by an experiential differentiation of the divine and the human in conscience. ‘Synderesis’ was perhaps so welcome, simply because it provided the means verbally to express a differentiation that had already taken place on the level of experience.

### 3.2.2. ‘Synderesis’ and ‘conscientia’ in scholasticism

It is impossible, nor would it be fruitful, to look into scholastic discussions of ‘conscientia’ and ‘synderesis’ in any detail here. For my purpose, it is more important to get an idea of the nature of these discussions than of their precise contents.<sup>18</sup> We have already noted – but it is an important point – that the differentiation between ‘conscientia’ and ‘synderesis’ was an *internal* differentiation within what by this time we may call the concept of conscience. ‘Synderesis’ and ‘conscientia’ belonged together; they were parts of the same ‘thing’, which we would call conscience. Hence, Kittsteiner

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<sup>15</sup> For Abelard on conscience see Hennig (2003).

<sup>16</sup> Störmer-Caysa (1995), 15.

<sup>17</sup> Idem.

<sup>18</sup> Potts (1980) provides a thorough discussion of the first scholastic treatise on conscience, written by Philip the Chancellor about 1235, and of the primary exponents of the two major schools of thought on the subject: Bonaventure (1221-1274) and Thomas Aquinas (1225-1274); he also provides translations of their treatises on conscience, and a list of medieval writings on conscience; Langston (2001) discusses extensively the background to scholastic discussions of conscience, and devotes chapters to Bonaventure’s view, the view of Thomas Aquinas, and that of Scotus and Ockham. It is from Langston’s book that I derive my brief discussion of the contents of the main scholastic positions. See also Stelzenberger (1963b), part II (67-106), and Schockenhoff (2003), 102-122; Störmer-Caysa (1995), 19-21 sums up some of the specialist discussions of Thomas Aquinas’ and Bonaventure’s views.



rightly speaks of an ‘in sich differenzierter Gewissensbegriff’, and Schockenhoff of a ‘Differenzierung im Gewissensphänomen’ that underlay the terminological distinction.<sup>19</sup> The scholastics were concerned with determining the proper place of both terms in a conceptual network that included the concepts of the will, reason, emotion, virtue, and many other besides.<sup>20</sup> The concepts of ‘synderesis’ and ‘conscientia’ were used in discussions of problems deriving from Platonic and Aristotelian ethics. Two major schools arose, because, as Störmer-Caysa aptly remarks: “Wie beinahe alle bedeutenden Lehren der mittelalterlichen Philosophie ist auch die über das Gewissen erst im Widerstreit zweier rivalisierender Bettelmönchsorden voll ausgearbeitet worden.”<sup>21</sup> For the Dominicans, Thomas Aquinas entered the ring; his opponent, for the Franciscans, was Bonaventure. ‘The ring’ was the University of Paris, founded around 1200. Both developed their views of ‘synderesis’ and ‘conscientia’ on the basis of the first treatise on the subject, that of Philip the Chancellor (somewhere in the 1160’s - 1236). He seemed to suggest, on the one hand, that ‘synderesis’ is an unerring intellectual (dispositional) potentiality, while on the other hand he held that ‘synderesis’ “moves us to the general good which is found in this or that good deed”.<sup>22</sup> So in Philip the Chancellor’s work could be found the beginnings of both an intellectualistic and a voluntaristic view of conscience.

Bonaventure links up with the latter aspect of Philip’s work. For him, ‘conscientia’ is a part of practical reason, while ‘synderesis’ belongs to the affective part of human beings. His leading question was: how can it be that people do evil, while they have an orientation on and drive towards the good, namely the ‘synderesis’? He distinguished within ‘conscientia’ between an unerring and innate ‘potential conscience’, and an equally innate but fallible ‘applied conscience’.<sup>23</sup> Evil arises through ignorance or faulty reasoning. With respect to the problems of ‘contra conscientiam agere’ and the ‘objectively erring, yet subjectively binding’ conscience, Bonaventure holds that it is wrong to act against our conscience, while also maintaining that it is wrong to act against God’s law, which is what an erroneous conscience may tell us to do. Langston notes that Bonaventure could have solved this dilemma by pointing out that to act against conscience would mean to act with the wrong intention, and to violate the internal representative of God, while to follow an erroneous conscience would merely be the result of ignorance. Bonaventure did not pursue this line of reasoning, however, because he focused on cases in which one had reason to suspect one’s conscience was in error. He recommended self-education for those with an

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<sup>19</sup> Kittsteiner (1995), 170; Schockenhoff (2003), 104.

<sup>20</sup> See Langston (2001), chapter 1.

<sup>21</sup> Störmer-Caysa (1995), 16.

<sup>22</sup> Langston (2001), 24; Potts (1980), 101-102.

<sup>23</sup> Langston (2001), 26; the terms are Langston’s.

erroneous applied conscience.<sup>24</sup> Bonaventure held that ‘conscientia’ “cannot move or vex or stimulate without the mediation of synderesis (...). [J]ust us reason cannot move without the mediation of the will, so conscience [cannot move] without the mediation of synderesis.”<sup>25</sup> ‘Synderesis’ is the ‘spark of conscience’. This ‘spark’ should not be understood as a part of conscience, but as the spark necessary to operate; it constitutes the general drive to do good, the drive to formulate true principles leading to good, the desire to follow those principles, and the vexation at having failed to follow them. ‘Synderesis’ aims at the good *in* objects, rather than good objects; it aims at the general good. Hence, it is not very practical, which is why ‘conscientia’ is needed. ‘Synderesis’ can never be destroyed, and is found in all human beings. Its exercise can be prevented by ‘darkness of blindness’ (which harks back to Plato), ‘wantonness of pleasure’ (which can be associated with Aristotle’s view on ‘akrasia’), or ‘hardness of obstinacy’. The third impediment, Langston notes, is not classical, but important in the voluntarist tradition.<sup>26</sup> When ‘hardness of obstinacy’ impedes the exercise of ‘synderesis’, there is no pursuit of the good. ‘Synderesis’ “can be said to be extinguished in respect of its exercise, but not extinguished without qualification, because it has another use, namely, to murmur in reply [to evil]. In this use (...) it flourishes most in the damned. I say this, in the sense in which murmuring in reply to evil is a punishment, not in the sense in which it is a matter of justice...”<sup>27</sup>

Langston points out the sophistication of Bonaventure’s concept of conscience: ‘synderesis’ and ‘conscientia’ are part of different faculties (the affective and the rational); yet they interpenetrate. We have a desire for the good (‘synderesis’), which makes us desire the means to that good; the principles of ‘conscientia’ are such means. If we disregard what ‘conscientia’ tells us is good in a particular situation, ‘synderesis’ will give us guilt or remorse. Bonaventure is able to answer the question ‘why should conscience be followed?’, “without moving outside a discussion of synderesis and conscience. Because synderesis is the desire for the good and conscience is an expression of synderesis, following one’s conscience is the means for pursuing the good.”<sup>28</sup> A final ‘bonus’ of the interconnectedness of ‘conscientia’ and ‘synderesis’ is that “it escapes the tendency to identify particular human functions with particular parts of the human being”.<sup>29</sup> So whatever we find in Bonaventure’s discussion of conscience, it is not a

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<sup>24</sup> Ibid., 27-28.

<sup>25</sup> Ibid., 29-30; quoted from Bonaventure, *Commentary on the Sentences*, in *Opera Theologica Selecta*, Ad Claras Aquas, Florence, 1934, 945b.

<sup>26</sup> Ibid., 32.

<sup>27</sup> Ibid., 33; quoted from Bonaventure, *Commentary*, 947a.

<sup>28</sup> Ibid., 35.

<sup>29</sup> Ibid., 36.

faculty or a pair of faculties. His view is more dynamic than that, which, finally, is also evident from Bonaventure's view that 'conscientia' "grows and changes with experience".<sup>30</sup>

The intellectualistic position was held by Thomas Aquinas, who placed both 'synderesis' and 'conscientia' in man's rational part, the former being a 'habit' ('habitus'), as opposed to a 'power' ('potentia'), while the latter was also not a power, but an 'act' ('actus'). 'Synderesis', in Langston's words, is a "natural disposition of the human mind by which we apprehend without inquiry the basic principles of behavior".<sup>31</sup> 'Conscientia' applies the 'first principles' apprehended by 'synderesis' to particular situations.<sup>32</sup> With this application the possibility of error, and thus of evil, arises. 'Synderesis' cannot be wrong; it is the voice of God. But its principles can be misapplied through false reasoning or the use of false premises.<sup>33</sup> Aquinas distinguishes between culpable and inculpable ignorance; ignorance is culpable when it concerns a law the agent should know.<sup>34</sup> Aquinas, like Bonaventure, held that conscience is binding. According to Langston, the "ultimate justification of his view that conscience is binding centers on the precept that not to follow conscience violates a first principle of synderesis". This principle would be "something like the claim that God ought to be obeyed. Because conscience is the voice of God, it follows that conscience ought to be obeyed."<sup>35</sup> Yet the question remains: why follow the first principles of 'synderesis'? The problem arises because Aquinas places both 'conscientia' and 'synderesis' in the rational faculty. Motivation needs to come from elsewhere.<sup>36</sup> Langston believes we can only make sense of Aquinas' view of conscience if we see it in the broader context of his ethics, which are to a great extent Aristotelian. Where they are not, Aquinas' views develop in discussion with Aristotle.

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<sup>30</sup> Idem.

<sup>31</sup> Ibid., 39.

<sup>32</sup> Aquinas resolves conscience ('conscientia') into "*cum alio scientia, i.e.,* knowledge applied to an individual case" (Aquinas [1981], Vol. I, 408; Pt. 1, Q. 79, Art. 13).

<sup>33</sup> Ibid., 40.

<sup>34</sup> Aquinas (1981), Vol. II, 675-676 (First part of the second part, Q. 19, Art. 6).

<sup>35</sup> Idem.

<sup>36</sup> In *De Veritate*, however, Aquinas also speaks of an 'act' of 'synderesis', which consists of a 'remurmurare malo et inclinare ad bonum' ['murmuring against evil and inclining towards good']; see Reiner (1974). Moreover, in the *Summa Theologica* itself, he writes: "Wherefore the first practical principles, bestowed on us by nature, do not belong to a special power, but to a special natural habit, which we call *synderesis*. Whence *synderesis* is said to incite to good, and to murmur at evil, inasmuch as through first principles we proceed to discover, and judge of what we have discovered." (Aquinas [1981], Vol. I, 407; Pt. 1, Q. 79, Art. 12.) This last qualification ('inasmuch...'), however, does seem to reintroduce the problem of motivation. It is not clear how 'discovery' (of what is good?) is linked to an inclination towards the good.

Most important in the present context is that “the richer activities of conscience found in Bonaventure’s discussion of conscience are placed by [Aquinas] into issues surrounding prudence”.<sup>37</sup> For Aquinas, there could be no prudence without moral virtue.<sup>38</sup> The rather empty and formal principles of ‘synderesis’ had to be supplemented and informed by experience and tuition; thus, prudence, ‘conscientia’, and ‘synderesis’ are connected. Moreover, the exercise of ‘conscientia’ is part of a larger framework: that of the gradual acquisition (through practice) and the exercise of the virtues. All these themes come together in Aquinas’ discussion of incontinence (‘incontinentia’), or weakness of will (‘akrasia’). The incontinent man, in the final analysis, lacks prudence; he suffers from weakness of will, because he has failed “to train himself adequately to see opportunities in the proper way”.<sup>39</sup> This amounts to culpable ignorance. Since prudence and ‘conscientia’ are related, “weakness of will also involves a failure of conscience”.<sup>40</sup>

In his evaluation of Aquinas’ views, Langston stresses that they depart from earlier discussions of conscience, where “the focus was on conscience and synderesis in isolation from other issues”. Aquinas places his discussion of conscience firmly within a broader (Aristotelian) ethical framework. Duns Scotus (1265-1308) and William of Ockham (1280-1349) follow Aquinas in this respect, but incorporate elements of both Bonaventure’s and Aquinas’ views in their own, while also taking the discussion in new directions. Much of what Bonaventure discussed under the heading of ‘conscientia’ is phrased in terms of the ‘will’ in the work of Duns Scotus. Ockham also takes a voluntaristic view of conscience. An important claim of his is that “only internal acts of the will are morally meritorious”.<sup>41</sup> Both Duns Scotus and Ockham see conscience as providing knowledge and guidance necessary to develop prudence and the virtues. Yet a radical turn occurs in Ockham’s writings. His voluntaristic conception of God led him to present God as absolutely free, and man as under the obligation to conform his will to that of God. “Evil is nothing else than to do something when one is under an obligation to do the opposite. Obligation does not fall on God, since He is not under any obligation to do anything.”<sup>42</sup> Hence, “the whole created order, including the moral law, is viewed by Ockham as wholly contingent”; “the divine will is the ultimate law of morality: the moral law is founded on the free divine choice rather than ultimately on the divine essence”.<sup>43</sup> The other side of this voluntaristic and authoritarian view of

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<sup>37</sup> Langston (2001), 43.

<sup>38</sup> *Ibid.*, 42.

<sup>39</sup> *Ibid.*, 50.

<sup>40</sup> *Ibid.*, 51.

<sup>41</sup> *Ibid.*, 62.

<sup>42</sup> William of Ockham, *Sentences*, Book 3, 5, H, quoted in Copleston (1983), 103.

<sup>43</sup> Copleston (1983), 104.

morality is that man has a duty to follow his conscience, even when it is ‘invincibly erroneous’; that is, when one is not responsible for the error. To follow an invincibly erroneous conscience is not sin, but duty.<sup>44</sup> These elements are united by the idea that an act chosen against the dictate of conscience “would be elicited contrary to the divine precept and the divine will which wills that an act should be elicited in conformity with right reason”.<sup>45</sup> Joseph Dolan argues fiercely against Ockham’s views, for replacing prudence with obedience as ‘chief cardinal virtue’, and for transforming the idea of law into that of an ‘arbitrary check’ upon the will: “Law and liberty no longer complement but confront each other. And conscience is on hand, not to work in harness with prudence in preparing its decision, but to mediate the rival claims of law and liberty and determine which of the two is ‘in possession’ (another legal formula).”<sup>46</sup>

“In many ways,” Langston says (but Dolan would not agree), “the view of conscience offered by Scotus and Ockham presents a culmination of medieval views about conscience. Yet, despite its power, this sophisticated view was abandoned for a number of reasons.”<sup>47</sup> The Roman Catholic tradition would revert to Thomistic views, and hold on to them until the previous century – some of its adherents until the present day. Luther was influenced by Ockham’s thought, via the work of Gabriel Biel. While first accepting the distinction between ‘conscientia’ and ‘synderesis’, he would later abandon it, however. But that is a matter for section 2.3.

### 3.2.3. Doctrinalization until scholastic times

There is a difference between expressing oneself by means of the term ‘conscience’, simply using the term ‘conscience’, and speaking *about* conscience. The first is a result of consciousness as luminosity; the second, and even more the third, are the products of consciousness in its intentional mode. The first is an example of symbolic language; the second and third are examples of indicative language. Yet, this picture is too clean. Once the term ‘conscience’ has become familiar, and its use has become the standard way of expressing certain experiences, its symbolic aspect will inevitably decline in favour of its indicative aspect. So there are many in-between cases; as a matter of fact, most cases are in-between cases on the scale from ‘purely’ symbolic to ‘purely’ indicative.

We see this illustrated in the history of the terms ‘syneidesis’ and ‘conscientia’. The substantivization that occurs in the time of Philo and Paul is a coagulation of what used to be more fluid. It is an important step towards conceiving of conscience as an inner entity, and with that towards

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<sup>44</sup> Ibid., 106-107.

<sup>45</sup> Ibid., 109; quoted by Copleston from Ockham, *Sentences*, Book 3, 13, C.

<sup>46</sup> Dolan (1971), 14-15.

<sup>47</sup> Langston (2001), 69.

an indicative use of the term ‘conscience’ (and its equivalents). Whereas in Romans 2:15 Paul ‘merely’ uses the term ‘syneidesis’, in 2 Corinthians 1:12 it functions more as a symbolic expression of his own experiences. The Stoics contributed to the power of the symbol of conscience, among other things by means of the ‘vox Dei’-symbolization. At the same time they furthered the spread and thereby the familiarity of the term, which constitutes an anti-symbolic tendency. Ritual and symbolism depend upon repetition for their power, but this power depends equally on the infrequency of repetition. Rituals that are too often repeated, and symbols that are too readily used, lose their meaning. The Latin Church Fathers, like the Roman Stoics, speak *about* conscience from time to time, but still there is no systematic reflection on the subject. Only at the end of patristic times do we find a cluster of statements under the heading ‘On Conscience’. In patristic and scholastic times, we see that the use of phrases like ‘my conscience’ and ‘his conscience’ becomes somewhat more frequent. Very gradually, conscience begets a thing-like character.

The differentiation within the concept of conscience between ‘synderesis’ and ‘conscientia’ was the most important differentiation in the history of conscience (either as symbol or concept) so far; it contributed to, and was a symptom of, doctrinalization. The distinction was elaborated in systematic and thorough reflection on the subject – a kind of reflection that had never occurred before with respect to conscience. The nature of this reflection can be illustrated by a brief reference to Bonaventure. He proceeded as follows: first, (after explaining what he was about to do), he asked: “Does conscience reside in understanding or in affect?”; five preliminary arguments for the former are presented, then five against the former; the conclusion is then reached that “conscience is a habit of a cognitive power insofar as the latter is practical, not insofar as it is speculative”; replies to the preliminary arguments are then given, after which Bonaventure moves on to the second question: “Is conscience an innate or an acquired habit?”<sup>48</sup> The picture is clear enough, I presume: the scholastics attempted to define the exact place of the concept under discussion in a specified conceptual network. They emphasized particular aspects of the experiential phenomenon of conscience at the cost of others, though, on the other hand, their conceptualization (especially in Bonaventure’s case) was so refined as to allow one concept to make up for the loss incurred by another. The distinction between ‘conscientia’ and ‘synderesis’ allowed Bonaventure to assign a function both to the intellectual and to the affective part of the human make-up. Thomas Aquinas, however, overstressed the intellect at the cost of the affective element. The scholastics differentiated between the ‘conscientia antecedens’ (the guiding conscience that operates before the act) and the ‘conscientia consequens’ (the retrospective conscience), but they did

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<sup>48</sup> Bonaventure (2001).

not yet introduce these terms. The terminological differentiation occurred in seventeenth-century Spain.<sup>49</sup>

The story of differentiation does not end there either; it is only after the translation of ‘conscientia’ into English, German, French, and other languages that the important terminological differentiation between conscience and consciousness is made – though in France only by distinguishing ‘conscience’ (consciousness) from ‘conscience morale’ (conscience). Nevertheless, the late Middle Ages are a crucial period in the differentiation of symbolizations and conceptualizations of conscience. The major thrust away from the symbolic understanding of conscience and towards the supposedly exact formulation of the nature and function of (the two parts of) conscience occurred in this period. Different schools of thought held different views as to the proper definition of conscience, but the dominant schools were alike in that respect, that they felt they could ‘pin conscience down’, so to speak. The strict definition of conscience led to insoluble problems, like that of the objectively erring but subjectively binding conscience.<sup>50</sup> Conscience, if not fully seen as an existent entity, was taken to be a definable part of a specified faculty.<sup>51</sup> As such, it became an additional factor to be reckoned with in moral reasoning. In combination with an insistence on objectively knowable and known truth – known through the Bible, and by the Church – this led to a duplication of the goal of morality: to do the right thing, *and* to obey the dictates of one’s conscience. Ideally, these were coincident, but in practice they often were not. This meant that people could, and had to, follow their conscience, while doing the wrong thing. The next question was that of the guilt of people following their erroneous conscience. We have seen that Abelard defined sin, subjectively, as acting against what one holds to be right; that is, against conscience. Thomas Aquinas held that the objectively erroneous conscience was subjectively binding, but he also thought that people who followed their erroneous conscience could be punished for committing an objectively evil act.<sup>52</sup> I guess there is no solution to such problems. The best thing to do would be to avoid such discussions altogether, by avoiding the duplication of the goal of morality through a misunderstanding of conscience. Augustine had still declared that the erroneous conscience was not to be followed, because God was a higher authority than conscience, and it was God’s command that was to be obeyed; thus, he may have realized at least to some extent that

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<sup>49</sup> Bosman (2003), 19.

<sup>50</sup> See part II, chapter 10.3.1.

<sup>51</sup> Reification is not a necessary element of indicative language; concepts can also be understood in a relational manner, that is, as occupying a certain place in a conceptual network, with specified relations to other concepts, and possibly even without any reference to an external reality.

<sup>52</sup> Baylor (1977), 53-58.

‘conscience’ is no more than a *human* articulation of *human* experience.<sup>53</sup> To treat it as such would also mean to avoid scholastic discussions, in which conscience becomes an extra factor in reality to be considered.

On the other hand, Augustine believed he *knew* what God’s command was, and so did the scholastics. If scholastic concepts of conscience left space for moral reasoning, this space was readily filled with Biblical truth and Church Doctrine. Aquinas had no doubts whatsoever concerning the contents of *synderesis*; nor was he in doubt concerning their correct application. Viewed from this perspective, the very discussion of the ‘objectively erring, yet subjectively binding’ conscience constitutes, not so much a recognition of the subjectivity of conscience, but rather an emphasis on objective truth. One has to be quite self-confident to feel free to judge which conscience is in error and which is not. Thomas Aquinas did not lack self-confidence, backed up as he was by Church doctrine. Sin was easily distinguished from its opposite; heresy stood out from the proper faith like daylight from the night, and its consequences were clear:

“Heresy is a sin which merits not only excommunication but also death, for it is worse to corrupt the Faith which is the life of the soul than to issue counterfeit coins which minister to the secular life. Since counterfeiters are justly killed by princes as enemies to the common good, so heretics also deserve the same punishment.”<sup>54</sup>

Doctrine, so it seems, is the currency of faith, sustaining the soul. Yet from another perspective it might be said that subjectivity *did* matter more. The erring conscience was binding for the subject because the subject believed it to represent God’s will, and it was clearly evil to go against what one thought was God’s will. This means that apart from objective truth, intentions and character mattered to the scholastics as well – which, given the influence of Aristotle, is hardly surprising. For Aquinas, however, subjectively good intentions did not exempt a person from punishment when the deed was objectively evil.

Scholastic discussions of conscience must be seen in their context. Bonaventure and Aquinas represent the culmination, and also the end, of medieval system building.<sup>55</sup> From their time onwards, the Church – in particular the papacy – changed its attitude: “For two centuries [the twelfth and thirteenth] the papacy had on the whole encouraged new ideas and new organizations. Innovators had instinctively sought papal protection and approval. Now the balance suddenly changed.”<sup>56</sup> A series of condemnations

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<sup>53</sup> Baylor (1977), 27 and footnote on page 29.

<sup>54</sup> Thomas Aquinas, *Summa Theologiae*, 2, 2, qu. xi, art. 3, quoted in Southern (1990), 17.

<sup>55</sup> Southern (1990), 42.

<sup>56</sup> *Ibid.*, 44.



followed, which “signalized the growing papal fear of extremism”.<sup>57</sup> A similar attitude had characterized the papal policy towards the Eastern Church since the middle of the eleventh century; from then on, “unity was seen (at least in the West) in terms of discipline, obedience, and uniformity”.<sup>58</sup> With regard to conscience, the emphasis on the element of authority had been increasing since patristic times. For the scholastics, conscience is primarily something that dictates, needs to be obeyed, and binds. With Ockham, this emphasis becomes even stronger, and it would become the most distinguishing element of Kant’s concept of conscience – hence Velleman’s remark that “the voice of conscience is (...) the voice of this authority” (the authority carried by dictates of conscience).<sup>59</sup>

With the scholastics, then, the doctrinalization of conscience had progressed very far: conscience was *defined* in terms of ‘synderesis’ and ‘conscientia’. The refined concepts of conscience that were developed allowed a more precise study of the human psyche, but (for that reason) they were instruments of control. The contents of conscience were also more explicitly fixed than before.<sup>60</sup>

Someone may object that it is no wonder that I see an increasingly indicative understanding of conscience in the course of history, given that I started out with (Egyptian and Greek) *expressions* of conscience, and went on to look at the writings of (mainly) philosophers and theologians, which, naturally, are more reflective in nature. Should I not have stuck with expressions of conscience, and would I then not have seen a continued symbolic understanding, which runs parallel to reflection on conscience, which entails an indicative understanding? To some extent this is true. I *have* moved from the level of expression to that of reflection. But the Socratic expression of conscience came from Plato’s work, and it is *within* philosophical and theological writings that we see an increasingly indicative understanding of conscience become dominant. Conscience started out as a symbol; the symbol became attached to certain terms, which became its prime carriers; these terms became more and more familiar, finally to become the object of systematic reflection. Importantly, this reflection shows no sign of an inherent recognition of the symbolic nature, or at least of the symbolic aspect, of expressions of conscience. It is likely that a parallel symbolic expression of experiences of conscience occurred throughout the period I have discussed so far, though it is impossible to say to what extent this involved the same terminology. It is likely that there was a connection

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<sup>57</sup> Idem.

<sup>58</sup> Ibid., 72.

<sup>59</sup> See 1.5.2.

<sup>60</sup> Cf. Stoker (1925), 30, who says that “with a host of sharp-witted notions” the scholastics “gave us a construction, that is determined too much by concepts and conceptual premises and too little by the objective reality of the phenomenon”.

between the ‘everyday’ expression of conscience and philosophical and theological reflection on conscience – the connection is certainly there, as we will see, after the Middle Ages. Reflection on conscience, and the indicative use of the term ‘conscience’ that went with it, came to influence the symbolic expression of experiences of conscience. For medieval times, I simply do not have the sources at my disposal to point out the same. What *is* clear from scholastic discussions of conscience, as well as from patristic literature, is that attempts were made to influence people’s *experience* of conscience. The extent to which these were successful is open to doubt, however, as Kittsteiner points out for even later periods.<sup>61</sup>

### 3.3. FROM SYMBOL TO DOCTRINE – AND BACK? CONSCIENCE IN RENAISSANCE AND REFORMATION

After the Middle Ages (but of course this starts in the Middle Ages) the conceptualization of conscience becomes very diverse; many different views spring up, and several traditions develop. With the Reformation, conscience becomes a hugely important concept, especially in the context of Luther’s Christian freedom (of conscience), which I discuss in part II. Meanwhile, its importance for the Catholic tradition does not diminish. This section will take up some important developments, especially those pertaining to the later critique and dismissal of conscience. Much that is relevant for an understanding of the symbol and concept of conscience in Protestantism, as well as in the thought of diverse (early) modern philosophers, will be discussed in part II. In chapter 9, I will also give an interpretation of the development of the concept of conscience in terms of a double inversion of meaning. This interpretation rests on what has been and will be said in the present chapter; as its direct relevance lies in the context of the relation between (concepts of) conscience and freedom of conscience, I will not present it here. The late Middle Ages and the early modern era are a time of intellectual upheaval and ferment. Though there is no period in history when there is no alternative to orthodoxy, this period abounds with alternatives – hence the rigidity of its orthodoxy. With respect to conscience, this means a rediscovery of symbolism as part of a growth of mysticism and spirituality. The rediscovery of Stoicism will also receive attention in this section, because it would prove to be an enduring element of modern thought. I conclude with a subsection on (Protestant) casuistry, which was a practical elaboration (and transformation) of Reformation thought, and would be an important point of departure for Enlightenment philosophy – even if they tended to aim their criticism at *Roman Catholic*, rather than Protestant,

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<sup>61</sup> See 10.3.2, where Kittsteiner’s (1995) opening lines are quoted, in which a priest (as opposed to laymen) is called a ‘man of conscience’.

casuistry. But I will start with an important feature of the late Middle Ages: the gradual appearance of non-Latin texts for lay-readers.

### 3.3.1. The translation of ‘conscientia’ and the solidification of conscience

The appearance of translations of Latin texts had important consequences for the concept of conscience, which had to be translated into many different languages, using either existing words, or derivatives of the Latin. Latin nouns have no article. ‘Conscientia’, therefore, inadvertently retained a certain fluidity, an elusiveness, that the article would destroy. Sometimes, the noun went accompanied by a possessive pronoun. We have seen Isidorus of Sevilla speak of ‘conscientiae suae’ (‘their consciences’); Bonaventure and Aquinas also used possessive pronouns occasionally.<sup>62</sup> This has the same effect as the use of an article – it vitiates the fluidity of the concept. With the translation of ‘conscientia’ into French, German, English, and other languages, articles and possessive pronouns became (gradually, in the case of English) more common or even grammatically necessary. The first known occurrence of the German ‘Gewissen’ illustrates this beautifully. Around the year 1000, an anonymous monk, adding translations to a commentary on the Psalms by Notker Teutonicus, wrote ‘gewizzen’ where Notker had written ‘conscientia’.<sup>63</sup> Above Notker’s ‘*quae mordet conscientiam*’ was written ‘*diu mih pīzzet in mīnero gewizzen*’ [‘die mich beißt in meinem Gewissen’] – (my) ‘conscience’ has become ‘my conscience’.<sup>64</sup> The Latin Bible used the possessive pronoun quite often already; translated into German, every occurrence of ‘Gewissen’ had to be accompanied by an article. So ‘conscientia’ becomes ‘das Gewissen’, ‘the conscience’, ‘la conscience morale’.

The difference between the French on the one hand and the German and English on the other, is that in the latter a further differentiation occurred between conscience and consciousness, ‘Gewissen’ and ‘Bewußtsein’. Where the German ‘Gewissen’, after a period of ‘*bedeutungsverengerung*’ as the Grimm brothers say, came to signify only (the moral) conscience, and where the English ‘conscience’ after some time could only mean ‘consciousness’ in poetic usage, the French ‘conscience’ retained the general meaning of consciousness, and needed to be qualified in order to signify conscience.<sup>65</sup>

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<sup>62</sup> See, for instance, the translations in Potts (1980), 111, 114, and 129.

<sup>63</sup> Störmer-Caysa (1995), 7; Kittsteiner (1995), 18, gives ‘giwizzani’; Grimm and Grimm (1911), 6219, gives ‘gawizani’.

<sup>64</sup> Störmer-Caysa (1995), 7.

<sup>65</sup> Grimm and Grimm (1911), 6219.

In English, from the thirteenth century onwards, ‘conscience’ replaced the earlier ‘inwit’ ‘in all its senses’, as the *Oxford English Dictionary* says.<sup>66</sup> It tells us that conscience

“is etymologically, as its form shows, a noun of condition or function, like science, prescience, intelligence, prudence, etc., and as such originally had no plural: a man or a people had more or less conscience. But in sense 4 [the moral sense] it came gradually to be thought of as an individual entity, a member or organ of the mental system, of which each man possessed one, and thus it took a and plural. So my conscience, your conscience, was understood to mean no longer our respective shares or amounts of the common quality conscience, but to be two distinct individual consciences, mine and yours. Where the word has continued to be used without the article, as in ‘the dictates of conscience’, orig. parallel to ‘the dictates of prudence’ or ‘of common sense’, the prevalent tendency is to personify Conscience as ‘this Deity in my bosom’.”<sup>67</sup>

So the story is that of the gradual solidification and reification of conscience. It shows the gradual coming into prominence of a faculty view of conscience, which will be discussed in chapter 4.

### 3.3.2. Mysticism and spirituality

There was also another side to translation. Section 3.3 is headed ‘From symbol to doctrine – *and back?*’ for a reason. Störmer-Caysa remarks that the example of Meister Eckhart shows the difficulty of translating the technical language of Latin theology into the German vernacular. But “[e]s zeigt auch die Chance, die mit diesem Medienwechsel verbunden ist. Das deutsche Wort ist begrifflich nicht festgelegt, folglich ungenauer. Es hat andererseits eine Aura, die der lateinische Begriff verloren hat. Eine längst konventionelle Lehre in lateinisch abgeschliffenen Worten wirkt dadurch deutsch neu und besonders...”<sup>68</sup> In other words: the change of language allowed the return from the conceptual and doctrinal level to the symbolic level. It revived the possibility for consciousness to relate to reality in its structure of luminosity, rather than intentionality. New language, not yet fixated but fluid, lends itself to become the symbolic vehicle of the expression of experience. Translation may thus become a variant of the ‘breaking forth of language’.

Störmer-Caysa uses the example of Eckhart’s ‘Funkenmetaphorik’ (‘spark metaphor’). The spark (‘scintilla’ in Latin) is usually a metaphor for the uncreated pneumatic ground (‘Seelengrund’). In the German sermon on Luke 14:16, however, it is related to ‘synderesis’. Störmer-Caysa rightly points out that this is in itself unremarkable, for ‘synderesis’ had since long

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<sup>66</sup> *The Oxford English Dictionary* (1978), lemma ‘Conscience’, 845.

<sup>67</sup> *Idem.*

<sup>68</sup> Störmer-Caysa (1995), 23.

been the ‘scintilla conscientiae’ – but Eckhart speaks of ‘daz vüncelin der sêle’ (‘the spark of the soul’). With his view of ‘synderesis’, understood as ‘ungeschaffener, göttlicher Seelengrund’, rather than ‘geschaffene, gottebenbildliche Naturausstattung’, Eckhart distances himself from the idea of ‘synderesis’ as ‘ein kraft der sêle’, Bonaventure’s ‘potentia animae’.<sup>69</sup> The view of ‘synderesis’ as the created image of God in man, which, as Störmer-Caysa points out, is still quite similar to Eckhart’s view, resembles that of ‘monastic and mystical theologians’ referred to by Mary C. Schroeder in her article on the fourteenth-century allegorical play *Piers Plowman* – a play in which Conscience is one of the principal characters.<sup>70</sup> Personification is itself a way in which a concept becomes much more than that: a character, a multifaceted and developing personality. The basic elements of the scholastic concept of conscience make up part of Conscience in this play, but another part is of a more mystical nature, resembling what the author of the contemporaneous allegory *The Abbey of the Holy Ghost* said about conscience when he described his work as “a buke of the religion of the herte, that es, of the abbaye of the Holy Goste”, built “in a place that es called ‘consyence’.”<sup>71</sup> Schroeder adds that “[t]his mystical tradition is also reflected in a Bernardine treatise, *Tractatus de interiori domo seu de conscientia aedificanda*.

The creator-image created in its likeness is nothing but wisdom in the soul, glory in the conscience, sanctity in the body.... Therefore the conscience should be pure so that it may lead God into our dwelling-place.

The author goes on to call a pure conscience:

the honor of religion, the temple of Solomon, the field of blessing, the garden of delights...the treasure of the King, the court of God, the habitation of the Holy Spirit.

It is conscience which essentially makes it possible for man to know God.”<sup>72</sup>

Mysticism of this kind was obviously not a new phenomenon, but it acquired a new impulse through those social changes of which the appearance of theological texts in the vernacular was one part and one symptom. At the same time that German religious-theological tracts appear,

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<sup>69</sup> Ibid., 24-25.

<sup>70</sup> Schroeder (1970).

<sup>71</sup> Ibid., 16-17.

<sup>72</sup> Ibid., 17. The passages quoted by Schroeder are translated from Latin. On the transformation of the ‘synderesis’ metaphor in the English Renaissance, see Greene (1991a). He shows (among other things) how mystical metaphors eventually became commonplaces, quoting even Margaret Thatcher, who expressed the view that “[e]ven the Soviets realize there is a divine spark (...) in every one of them which they must not ignore if they are to reach the right answer” (219).

around the middle of the fourteenth century, Latin treatises on conscience stop appearing. “Es ist, als hielte die scholastische Ethik sich selbst im Zaum, als wolle sie sich kaum noch bewegen und keine beunruhigenden Theorien hervorbringen, seit beinahe jede Theorie in den Volkssprachen wiederzugeben versucht wurde.”<sup>73</sup> But for practical reasons, Störmer-Caysa writes, the subject had to be discussed: “So wechselt die Gewissensdiskussion das Medium und die Sprache. In Predigten und Erbauungsschriften ist ständig von dem Phänomen Gewissen die Rede. Auf deutsch, französisch, englisch, italienisch, mit den Mitteln dieser Sprachen, also ohne das ausgebildete begriffliche Inventar des Lateinischen.”<sup>74</sup> It stands to reason that these first attempts did not have the refinement of a Thomistic treatise – but I would say they served another audience and another purpose. At any rate they contributed to the solution to an important problem: that of the language in which conscience speaks. What is the ‘Muttersprache’ of conscience? Is it the spiritual language of ‘synderesis’, or the natural, external language of conscience? The latter must necessarily fall short of the former, of which it is only an imperfect image. It was not an option to drop the spiritual language, so the natural language was ennobled: “Das Gewissen spricht in der Muttersprache. Es ist eine Seitenlinie derselben Entwicklung, die in ganz Europa auch zur Durchsetzung volkssprachlicher Bibeltex-te führt.”<sup>75</sup>

Popular mysticism was particularly an urban form of religion. Urbanization was an important feature of the late Middle Ages, and city life stimulated a different sense of spirituality. Hence, Southern can say that “Eckhart was the first impressive spokesman for the religion of articulate townspeople”.<sup>76</sup> The rise in the number and size of cities had some significant consequences. “Articulate lay opinion about religion, often crude and generally subversive, began in the towns.”<sup>77</sup> ‘New types of religious organization and a new intensity of personal religion’ sprang up.<sup>78</sup> “Emotion is the leading characteristic of urban religion. It transports men out of the pressures of business (...) and it transports them into a world of the spirit where (as Eckhart taught them) ‘God begets his Son in the soul’ and ‘in this way (...) the soul is made equal to God’.”<sup>79</sup> Urban life bred dissent, and the new religious movement posed a threat to social stability, especially when their momentum was greatly strengthened by the invention of the printing press. We will see in the next chapter that seventeenth-century criticism was

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<sup>73</sup> Störmer-Caysa (1995), 25.

<sup>74</sup> *Idem.*

<sup>75</sup> *Ibid.*, 27.

<sup>76</sup> Southern (1990), 45.

<sup>77</sup> *Ibid.*, 46.

<sup>78</sup> *Ibid.*, 47.

<sup>79</sup> *Ibid.*, 48.

largely aimed at the doctrines spread in pamphlets, rather than at philosophical or (academic) theological positions.<sup>80</sup> The rise of towns and universities had formed the seedbed for new monastic movements, those of the Dominicans and the Franciscans, both of which advocated a return to a purer and simpler way of life.<sup>81</sup> The latter movement belongs “to the succession of ephemeral urban movements, like the ‘Apostles’ (...), which appeared spasmodically throughout Europe from the mid eleventh century onwards”.<sup>82</sup> They had in common with people like John Wycliffe (ca. 1320-1384), Eckhart, Thomas à Kempis (ca. 1380-1471), Erasmus, and Luther, an aversion to established organized religion, wonderfully expressed by Eckhart in this passage:

“If anyone imagines he will get more by inner thoughts and sweet yearnings and a special grace of God than he could get beside the fire or with his flocks or in the stable, he is doing no more than trying to take God and wrap His head in a cloak and shove Him under the bench. For whoever seeks God in some special Way, will gain the Way and lose God who is hidden in the Way. But whoever seeks God without any special Way, finds Him as He really is; and such a man lives with the Son, and He is life itself.”<sup>83</sup>

A more intense and spiritual religiosity entailed a different experience of conscience. Walter Hilton’s (1340-1396) *The Ladder of Perfection* (first printed in 1494) provides a good example of this.<sup>84</sup> Written for a nun as a guide to contemplation and an aid to spiritual growth, *The Ladder of Perfection* places great emphasis on the need to overcome one’s sinfulness, to clean one’s conscience, in order to reach the third and highest stage of contemplation, in which one reaches a union with God. The higher part of the second stage of contemplation – the second stage consisting principally in loving God –

“can only be reached and retained by those who live in great peace of body and soul, and who by the grace of Jesus Christ and through prolonged bodily and spiritual discipline have found peace of heart and purity of

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<sup>80</sup> The breaking-up of the medieval ‘unity’ of faith is also discussed in part II.

<sup>81</sup> Southern (1990), 72ff.

<sup>82</sup> *Ibid.*, 283; on the ‘Apostles’, see 276.

<sup>83</sup> Meister Eckhart, *Die Deutschen Werke*, J. Quint (ed.), 1938-? (work still in progress when quoted by Southern [1990], 301), i (*Predigt* 5b), 450. About Thomas à Kempis, see Hale (1985), 236. On Erasmus’ ‘Law of Degeneracy’, regarding the corruption of organization (including the church) see Salomon (1963), 22, 27, and 34.

<sup>84</sup> Hilton (1988). The work was originally in Latin.

conscience, so that they desire nothing more than to live quietly in constant prayer to God, and in meditation on our Lord.”<sup>85</sup>

The third stage consists “in knowing God and loving him perfectly. This is achieved when the soul is restored to the likeness of Jesus and filled with all virtues.”<sup>86</sup> Conversion often begins with contemplation of one’s sins. The intensity of this experience is expressed in terms of ‘great compunction and heartfelt sorrow’, ‘grief and tears’, a ‘pricking and tormenting conscience’, ‘agony of mind’. Someone who experiences this will ‘urgently ask God’s mercy and forgiveness’. “And God’s great mercy consists in this; that He will not only forgive the guilt of sin, but will remit its punishment in purgatory for a little pain and remorse of conscience here.”<sup>87</sup> When we have ‘cast out our sins from our hearts’ and ‘swept our souls clean with the broom of the fear of God’, and washed it with our tears, we will have a clean conscience, and be able “to feel the close and peaceful presence of our blessed Lord Jesus Christ, given as a foreshadowing and glimpse of Him as He is”.<sup>88</sup> The element of intimacy is present in this expression of the felt presence of Jesus, but is also more generally an aspect of the experience of conscience, for the examination of conscience is an examination of one’s inner dispositions and of one’s will. If the will is “turned away from every kind of mortal sin”, and if one has confessed one’s previous offences “with a firm resolve to abandon these sins”, one’s “soul is restored by faith to the likeness of God”.<sup>89</sup>

“[T]he true Sun does not display Himself to bestow mental light and perfect charity upon the soul unless the sky is first bright and free from clouds; that is, unless the conscience is first cleansed in this darkness by the fire of a burning desire for Jesus, which cauterizes and destroys all evil impulses of pride, vainglory, anger, envy, and other sins in the soul.”<sup>90</sup>

When the conscience is ‘cleansed by grace’, one’s ‘spiritual eyes’ are opened; this happening is called a ‘glowing darkness’ and a ‘rich nothingness’; moreover:

“Purity of soul and spiritual rest, inward stillness and peace of conscience, refinement of thought and integrity of soul, a lively consciousness of grace and solitude of heart, the wakeful sleep of the spouse and the tasting of

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<sup>85</sup> Ibid., 6-7.

<sup>86</sup> Ibid., 7.

<sup>87</sup> Ibid., 38. For Luther, hell is (and will be) nothing but the tormenting conscience itself; see Kittsteiner (1995), 117ff.

<sup>88</sup> Ibid., 60.

<sup>89</sup> Ibid., 128.

<sup>90</sup> Ibid., 173.



heavenly joys, the ardour of love and the brightness of light, the entry into contemplation and reformation in feeling.”<sup>91</sup>

Grace “banishes the pain and remorse (...) and brings peace and reconciliation, uniting God and the soul in a single will. There is no harsh reproof of the soul for its sins (...). All its misdoings have been forgiven.”<sup>92</sup>

In many ways *The Ladder of Perfection* seems to anticipate the Lutheran Reformation. Grace (or salvation) is to be reached by going through the hell of one’s own conscience first. The sincerity and intensity of this experience is crucial. The element of ultimate concern is to be present in the experience, and if it is, it will make the transition from its one form to the other – from authority to inspiration. The soul is cast down in the first stage, and is covered in darkness (though not the good, glowing darkness Hilton also speaks of); but then, with God’s grace, one enters the light, and this is joy and ecstasy. In Luther’s terms, one would be free. The danger inherent in this process from the beginning is that it becomes an instrument of discipline – and indeed, this did happen. I have discussed the symbolism of the worm of conscience in chapter 1; in one case, ‘synderesis’ was described as the worm. The symbolism of light is inevitably accompanied by the symbolism of darkness and despair. The Candle of the Lord may light up one’s soul, but also set fire to it; the spark of conscience may ignite the fires of hell. J.R. Hale points out that “[t]he church was careful to leave escape routes for the sinful (...). Unless there was suspicion of downright heresy, its yoke was laid fairly lightly on the conscience of the individual.”<sup>93</sup> New religious movements could distance themselves from the church in two ways: either by denying the need for (or pointing out the dangers of) institutionalized religion, thus unburdening the individual believer to some extent, or by stimulating a more intense religious experience, which was in practice more likely to burden the (sinful) believer than to unburden him. Quite often, these things went together. Both were attempts to return to a purer faith.

A more intense religious experience may, for a while, entail a revival of symbolism, but it is likely to travel the way from the intense experience, via subjective certainty, to a belief in the truth of one’s symbols, no longer understood as such. Unless it is a purely mystical experience – and even in that case it is debatable – any religious experience will be coloured by the symbols in which it is expressed, and by pre-existing conceptual frameworks.<sup>94</sup> It is therefore hard for any believer to separate the certainty inherent in the experience from the symbols in which they express them.

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<sup>91</sup> Ibid., 223; see also 229 and 233.

<sup>92</sup> Ibid., 225.

<sup>93</sup> Hale (1985), 237.

<sup>94</sup> See Proudfoot (1985).

Religious symbols, then, are always likely to turn into doctrine, and most of them are somewhere in between.

Late medieval religious movements, the Lutheran Reformation, and humanist thought shared many characteristics.<sup>95</sup> Luther's own religious experience was much like that aimed at in *The Ladder of Perfection*. He renounced the authority of the church, and rejected much of its institutional framework, which he saw as corrupt. His aim was a purer and simpler faith, an intensely subjectively experienced faith, with the Bible as its only authority – the Revelation to which everyone had equal access, without mediation by the clergy. That the practice was different hardly needs saying. Even if more people could own a Bible and read it, this did not ensure the right interpretation. Also, one can speculate whether the invention of the printing press did not stimulate the quest for certainty that was already taking place. Of a handwritten book there were never that many copies, copies differed among each other due to accidental or deliberate changes made by copyists, and much scholarly referring was done from memory. This was a fluidity that the printed word lacked. The printing press stimulated the transition from a memory-based to a paper-based society, giving rise in early modernity to expressions like 'having it black on white' – which is an expression of absolute certainty. Thus, the printed word, while it offered the opportunity to challenge dogma, was at the same time ideal for the spread of dogmatic truth.

"Humanism," Hale writes, "had a mystical core."<sup>96</sup> He points to Pico della Mirandola (1463-1494) as its most mystical expression. In his famous *On Human Dignity*, Pico posits man as a creature unlimited by nature, able to be what he wants to be, to form himself as he pleases. Man is godlike in creativity, and he alone is able to contemplate the beauty of Creation. If he desires, man can rival even the Seraphines. Hence, "humanism as a movement had a clear plan for educational reform. At its core was a belief in self-improvement by taking thought and exercising the will. (...) Without this mystical element, which was essentially private and contemplative, humanism would have lacked much of its intensity. Yet paradoxically this new concern with self-perfection enabled it to be seen for the first time as a reformist movement."<sup>97</sup> Humanists "postulated a return to the spiritual and moral resources of the church."<sup>98</sup> They wished to 're-unite heart and mind', which entailed an attack on the scholasticism in which they themselves had been educated.<sup>99</sup> A concern for man's moral development was an important aspect

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<sup>95</sup> Of course there were also great differences; take only the debate on free will between Luther and Erasmus.

<sup>96</sup> Hale (1985), 289.

<sup>97</sup> Ibid., 288.

<sup>98</sup> Salomon (1963), 21.

<sup>99</sup> Hale (1985), 288.

of humanist thought. Erasmus and More represent this aspect.<sup>100</sup> More ended his life as a conscientious objector *avant la lettre*. He will receive ample attention in part III. As an important part of the influence of humanism lay in their use of “the wisdom of the old world to redress the values of the new”, I will now turn to the influence of Stoicism.<sup>101</sup>

### 3.3.3. The influence of Stoicism

Stoic thought had had its influence on the early Church Fathers; in the Renaissance it got a second chance to impress itself upon the European mentality.<sup>102</sup> Salomon writes about the influence of Stoicism as a ‘Weltanschauung’ which “assures an understanding of the world and the liberation of the philosopher from it by the sovereignty of the mind”.<sup>103</sup> He pays particular attention to the importance of Epictetus’ *Enchiridion*, a manual for those who wish to become ‘true philosophers’, and also ‘a manual for the combat officer’ – for the Stoics used many military metaphors.<sup>104</sup> An ‘advancing’ student “understands the basic Stoic truth of subjective consciousness, which is to distinguish what is in our power from what is not in our power”.<sup>105</sup> All external goods belong to the latter category. What we *can* control is our thoughts, intentions, desires, decisions. Self-knowledge and self-control can make a man free.

Erasmus wrote his *Enchiridion Militis Christiani* for a similar purpose: to make man free, to show him the way to salvation. Indeed, Salomon points out that the term ‘Christian liberty’ was coined by Erasmus, not Luther.<sup>106</sup> The first rule for someone desiring a Christian way of life was to have a strong and sincere belief in God and ‘the promises of God’.

“If (...) thou often stir up the flame of faith, and then fervently desire of God to increase thy faith I shall marvel if thou canst be any long time an evil man. For who is all together so unhappy and full of mischief that would not depart from vices, if so be he utterly believed, that with these momentary pleasures, beside the unhappy vexation of conscience and mind, is purchased also eternal punishments: on the other side, if he surely

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<sup>100</sup> Ibid., 289. On Erasmus’ religion and morality, see Salomon (1963), 24-43: “Democracy and Religion in the Work of Erasmus”.

<sup>101</sup> Hale (1985), 277. I also discuss the influence of mysticism and humanism in part II, in relation to the rise of the ‘subjective’ conscience.

<sup>102</sup> Salomon points out that similarities in the socio-political circumstances may help explain the re-emergence of Stoicism (16). With regard to Luther’s thought, which contained many similarities with Stoicism, cf. Maurer (2002), 25: “Wichtiger ist, daß die Politik ihren letzten, totalitären Ernst verliert, wenn sie das Gewissen und den Glauben nicht tangieren kann.”

<sup>103</sup> Salomon (1963), 15.

<sup>104</sup> Ibid., 19.

<sup>105</sup> Idem.

<sup>106</sup> Ibid., 28.

believed for this temporal and little worldly vexation to be rewarded or recompensed to good men an hundred fold joy of pure conscience presently: and at the last life immortal.”<sup>107</sup>

The second rule is

“that thou go unto the way of life, not slothfully, not fearfully: but with sure purpose, with all thy heart, with a confident mind, and (if I may so say) with such mind as he hath that would rather fight than drink: so that thou be ready at all hours for Christ’s sake to lose both life and goods.”<sup>108</sup>

In this chapter Erasmus states in stern Stoic fashion that “there be but two ways only, the one which by obedience of the affections leadeth to perdition: the other which through mortifying of the flesh, leadeth to life.” Further on, he states that there is a divine element in human nature:

“What this visible sun is in the visible world that is the divine mind, that is to say God, in the intelligible world, and in that part of thee which is of that same nature, that is to say in the spirit.”<sup>109</sup>

Here we see how the Stoic ‘seed’ metaphor (the *‘logos spermatikos’*) is couched in metaphors of light; in this period and the following centuries, the ‘seed’ metaphor and expressions related to *‘synderesis’* would often combine.<sup>110</sup> In Erasmus’ work, Stoicism acquires a social dimension. Though the imitation of Christ meant a turn away from everything worldly, ‘inward living’ as Salomon calls it, the realization that every man has a divine spirit urged towards charity. Erasmus’ “social spiritualism closes the dualism of the medieval world between the spiritual and the secular areas”.<sup>111</sup>

“Paul calleth charity to edify thy neighbour What is true charity., to count that we all be members of one body, to think that we all are but one in Christ (...). If any brother err or go out of the right way, to warn him, to admonish him, to tell him his fault meekly, soberly and courteously: to teach the ignorant: to lift up him that is fallen: to comfort and courage him that is in heaviness: to help him that laboureth: to succour the needy. In conclusion to refer all riches and substance, all thy study, all thy cares to this point, that thou in Christ shouldest help as much as thy power extendeth to.”<sup>112</sup>

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<sup>107</sup> Erasmus (1905), chapter IX.

<sup>108</sup> *Ibid.*, ch. X.

<sup>109</sup> *Ibid.*, ch. XIII.

<sup>110</sup> See Greene (1991a), 205.

<sup>111</sup> Salomon (1963), 37.

<sup>112</sup> Erasmus (1905), ch. XIII.

For Luther, salvation was a matter of faith, and it was something that *happens* to one, a *gift* from God. In Erasmus' view, it was much more a matter of control; he was more positive about man's natural capacity to reach God. For Luther, man's conscience had to be liberated from outside – by God; Erasmus thought man capable of attaining a clear conscience himself.<sup>113</sup> “Moral learning and spiritual learning as a way of life lead to Christian liberty, tranquillity of mind, and peace of conscience – ideals of human perfection on which pagans and Christians, Epicurus and Christ, agree.”<sup>114</sup> If one could help oneself to attain these goals, it was also one's duty to help another. This, in Erasmus, is the result of the combination of Stoicism and Christianity. The Christian conscience was self-sufficient; it needed praise nor reward, and it was happy with a simple life, an independence of worldly goods.<sup>115</sup> “True and only pleasure is the inward joy of a pure conscience.”<sup>116</sup> For all its stress on inwardness and detachment from the world, this would become the basis for Enlightenment views on the perfection of society.

But the influence of Stoicism went beyond this. Salomon identifies three functions it had in the modern world: “first, it reconciled Christian traditions to modern rationalistic philosophies; secondly, it established an ideal pattern of natural religion; and, thirdly, it opened the way for the autonomy of morals.”<sup>117</sup> With Erasmus, we have only seen the beginning of the renewed Stoic influence. The more practical its application became, the more rigid also the conscience which was to be instilled in man. Late medieval spirituality constituted a temporary, rather than a lasting return to a more symbolic expression and understanding of conscience.

#### **3.3.4. Conscience and casuistry**

Martin Luther (1483-1546) initially accepted the scholastic distinction between ‘conscientia’ and ‘synderesis’. By 1519, however, ‘synderesis’ had disappeared from his writings. Baylor holds the view that this was the result of the fact that Luther had “established a new object for the working of the conscience: its judgments are not just about actions (...) – it also judges about the agent who performs these actions, the individual or person as a whole.”<sup>118</sup> In the scholastic view, ‘synderesis’ offered the principles which

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<sup>113</sup> His awareness of the difference between a clear and a troubled conscience was no less acute than Luther's: “To speak briefly, no pleasure is lacking where is not lacking a quiet conscience. No misery is there lacking where an unhappy conscience crucifieth the mind.” (Ibid., ch. XI). Cf. Salomon (1963), 29, on Erasmus' trust in man's nature.

<sup>114</sup> Salomon (1963), 43.

<sup>115</sup> See Erasmus (1905), ch. XIV.

<sup>116</sup> Idem.

<sup>117</sup> Salomon (1963), 20.

<sup>118</sup> Baylor (1977), 201; also quoted in Langston (2001), 75.

‘conscientia’ applied to concrete cases. “In order to develop a view of the conscience which depicted the conscience as concerning itself, on the highest level, with the person as a whole rather than just his particular actions, Luther was forced to discard the synteresis as the ontological base and, in this sense, determinant of the conscience.”<sup>119</sup> Conscience is transformed from a guide in action to a mirror of the soul, reflecting the moral state of the whole person. According to Langston, this “‘Protestant turn’ in relation to views about conscience, that is, the focus on the state of the person, was prepared for by the ‘turn to the virtues’ in Scotus’s and Ockham’s views about conscience”.<sup>120</sup> What Langston considers to be ‘one of Luther’s most lasting contributions to the history of views about conscience’, however, results from his downplaying (which Scotus and Ockham did not do) of the connection with practical reason: “Once conscience is no longer thought of as part of a process (of practical reason) and is viewed as something like a judge of the whole person, the way is prepared for conceiving of conscience as an independent entity, a most unfortunate turn in the history of the concept of conscience.”<sup>121</sup>

Langston moves a bit too fast here. We have seen that the paulinian ‘syneidesis’ also testified to the piety of the individual – not so much particular deeds, but the whole of one’s conduct in life and the state of one’s person were the object of ‘syneidesis’. Yet no faculty view of conscience developed in the wake of paulinian writing. Insofar as Luther had an influence of the kind Langston ascribes to him, it must have been in combination with fifteen hundred years of gradual development in the direction of the idea of conscience as an independent entity, more specifically: a faculty.

Protestant casuistry prepared the way for the faculty view of conscience, but “perhaps the person most responsible for the modern view that conscience is a faculty”, bishop Joseph Butler (1692-1752) rejected casuistry.<sup>122</sup> Kittsteiner explains the rise of Protestant casuistry as the result of a difference between theory and practice. Luther despised casuistry (which was at that point still an exclusively Roman Catholic thing); so how could Protestants develop a casuistry of their own? Luther’s concept of conscience is an integral part of the core of his theology. Kittsteiner explains it as follows: “Ein ursprüngliches Wissen von Gott und seinen Geboten bleibt im Gewissen immer erhalten.”<sup>123</sup> This is identified with the Decalogue; even

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<sup>119</sup> Baylor (1977), 202.

<sup>120</sup> Langston (2001), 77.

<sup>121</sup> Idem.

<sup>122</sup> Ibid., 80. It should be noted that William Ames, an important Protestant casuist, rejected the faculty view of conscience advocated by his teacher William Perkins in favour of a more Thomistic approach; see Davis (2005).

<sup>123</sup> Kittsteiner (1995), 172.

when people were never given the Decalogue, they know by nature that God should be worshipped and one's fellow man loved. This knowledge, however, is clouded; that is why we need the law of the Old Testament. It teaches us that we are all sinners, whatever we attempt. Fear and desperation are the result. "Aber in diese affektuale Gewissenserfahrung stößt das 'andere Wort' hinein", saying that if only people believe in Christ, they will be freed by God's grace.<sup>124</sup> In this new state of justification, of Christian freedom, good works will be done, but not to achieve salvation, not as something people can or need to rely on to be saved, but they will flow from faith, in the Christian's knowledge that he is justified. Conscience finds peace through God's grace; "Das gute Gewissen ist das beruhigte Gewissen."<sup>125</sup> Now, the problem with this conception of conscience, Kittsteiner says, is that it is doubtful that many people will achieve this kind of experience, this type of faith. "Luthers Gewissensbegriff ist der eines 'homo religiosus'; er setzt ein Maß an innerer Erfahrung voraus, das nicht verallgemeinert werden darf. Wollte man sich nur an die Aussagen der symbolischen Schriften des Protestantismus halten, käme man zwangsläufig zu dem Resultat, daß eine universale Gewissensangst im frühen 16. Jahrhundert Trost im Glauben gesucht habe. (...) Doch neben der 'Mönchsfront' kämpft der missionierende Protestantismus an der 'Bauernfront', und hier gelten andere Spielregeln."<sup>126</sup> This other 'front' required another treatment. Casuistry was an instrument in that treatment.

The oldest German example of Protestant casuistry is a tractate by Friedrich Balduin from 1628.<sup>127</sup> In England, William Perkins (1558-1602), sometimes called the 'father of Puritanism', wrote *A Discourse on Conscience* and *Cases of Conscience*. William Ames (1576-1633) published his *De Conscientia, eius Iure et Casibus* in 1630; it was translated into English and Dutch, and later (1654) into German. Perkins and Ames combined the new Protestant faith with a desire to live correctly in all detail; Perkins had a 'zeal for precise Christian living', and this required 'precise moral reflection' – hence his interest in casuistry.<sup>128</sup> While Perkins was still quite close to Luther in his views on man's road to salvation, although he placed more emphasis on 'performing obedience' as a way to salvation, Balduin departed significantly from Lutheran views.<sup>129</sup> Balduin begins by contrasting his casuistry with

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<sup>124</sup> Ibid., 173.

<sup>125</sup> Ibid., 172.

<sup>126</sup> Ibid., 173-174.

<sup>127</sup> Ibid., 177.

<sup>128</sup> "William Perkins (1558-1602)".

<sup>129</sup> In chapter 5 of *Cases of Conscience*, Perkins deals with the question "What must a man do, that he may come into God's favor, and be saved?" He summarizes his own (detailed) answer as follows: "[T]he man that would stand in the favor of God and be saved must do four things: first, humble himself before God; secondly,

papish casuistry. Difficult cases of conscience were to be dealt with on the basis of Scripture, as opposed to the tradition of the Church or papal decrees.<sup>130</sup> Yet he saw another guide, besides the Bible: “hat denn nicht jeder Mensch ein eigenes Gewissen?”<sup>131</sup> This conscience binds, not by itself, but insofar as it has the divine law behind it.<sup>132</sup> Its binding power depends on the lurking presence of God’s wrath behind the conscience, but in practice this power is often too weak. Hence, Balduin comes up with an elaborate classification of consciences. There is the ‘right conscience’ (*recta conscientia*), the ‘hesitant conscience’ (*conscientia dubia*), the ‘*conscientia opiniabilis*’ that depends on uncertain ideas, the ‘scrupulous conscience’, and (worse) the ‘perverse/wrong conscience’ (*conscientia perversa*), the ‘*conscientia perplexa*’, the too lenient conscience, the dangerous conscience, and the ‘cauterized/stigmatized conscience’ (*conscientia cauteriata*). In fact, many of the last types of conscience are names for a non-existent conscience: “der Begriff des Gewissens wird auch dann benutzt, wenn das faktische Nicht-Vorhandensein eines Gewissens ausgedrückt werden soll. Jeder Mensch hat ein Gewissen; der qualifizierende Zusatz aber macht darauf aufmerksam, daß bei einem Großteil der Menschen nicht mit einem funktionierenden Gewissen zu rechnen ist, zumindest nicht mit einem Gewissen im Sinne der Moraltheologie.”<sup>133</sup> To say that everyone has a conscience, then, is a normative statement, to be understood in the context of a disciplinary mission.

“Luther hätte wohl seinen Augen nicht getraut bei diesen Aussagen eines Lutheraners,” Kittsteiner remarks after an exposition of Balduin’s presentation of the role of conscience in man’s salvation.<sup>134</sup> Balduin revived the notion of ‘*synderesis*’, holding this retained conscience to be a condition necessary for any Christian to come to faith, whereas with Luther ‘das

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believe in Christ; thirdly, repent of his sins; fourthly, perform new obedience to God.”

<sup>130</sup> Luther and Protestants generally – but the Jansenist (and thus Catholic) Blaise Pascal is particularly known for it – despised especially the Catholic probabilism, which is defined as follows by the Wikipedia: “In moral theology, especially Catholic, it refers especially to the view in casuistry that in difficult matters of conscience one may safely follow a doctrine that is probable, for example is approved by a recognized Doctor of the Church, even if the opposite opinion is more probable.” In Protestant views, this came down to moral laxity. The online Catholic Encyclopedia defines it as “the moral system which holds that, when there is question solely of the lawfulness or unlawfulness of an action, it is permissible to follow a solidly probable opinion in favour of liberty even though the opposing view is more probable.”

<sup>131</sup> Kittsteiner (1995), 178.

<sup>132</sup> *Ibid.*, 181.

<sup>133</sup> *Ibid.*, 184-185.

<sup>134</sup> *Ibid.*, 186.



geängstete Gewissen' found 'Kraft und Erlösung' in faith. With Luther, the awareness of one's sinfulness led to the acceptance of faith; Balduin (and others) made an ethical turn, positing the retention, revival, and healing of conscience as the goal of casuistry. For them, this was what 'reborn' Christians really needed.<sup>135</sup> They may have been 'reborn', but that did not mean that it was no easy for them to remain on the right track. Therefore, people were urged to probe their consciences, to meditate, to remember the coming of the final Judgement.<sup>136</sup> It is not surprising, then, that puritans were among the most ardent writers of (religious) diaries. The English dissenting minister John Reynolds (1667-1727) is a good example. He enrolled in Pembroke College, Oxford, in 1684. Seventeen years old, he drew up a covenant with God, to help him withstand earthly temptations. Eleven years later, he reviewed and renewed his covenant:

"Blessed Lord! though now 'tis ten or eleven Years since in *Oxford* a Place of Temptation, the foregoing Covenant was solemnly entered into, in thy Presence, under thy view, thy self being Witness; and though in all these ten Years, what through Sin and Miserable and inexcusable forgetfulness (Oh how is my Love, and Faith, and Joy, decay'd since the Day of mine espousals unto thee!) and what thro' frequent and long Absence, from this subscribed Covenant, I don't remember that in all these Years this Covenant has been review'd or read over, yet still, Dearest Lord, my Heart, as far as I can know it, stands to it, loves it, and loves thee for bringing me into it..."<sup>137</sup>

Casuists wrote in detail about the manner in which one's conscience was to be probed. Kittsteiner enumerates the list of questions drawn up by Georg Philipp Hardsdörffer (1607-1658), who translated William Ames' casuistic works. A central element in these questions is the almost threatening presence of God that is behind the judgement of one's own conscience. But the reborn Christian can be recognized from the outside: "sie sind sanft, demütig, lassen sich zum Guten belehren".<sup>138</sup>

Casuistic works were often (to a large extent) aimed at parsons and ministers, rather than the members of their congregations. They instructed in what conscience is, in its relation to religion, in the recognition of make-belief and how to deal with it, and in many moral matters. For many everyday moral problems, they provided syllogisms for their resolution. But

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<sup>135</sup> Ibid., 186-187.

<sup>136</sup> Ibid., 188.

<sup>137</sup> *The Pleasure and Benefit of being Religious, exemplified in the Life of the late Rev<sup>d</sup>. Learned and Pious Mr. John Reynolds* (1740), 19. The author and compiler of this work is anonymous, but the passage quoted comes from Reynolds' own manuscripts.

<sup>138</sup> Kittsteiner (1995), 190. He notes: "Erkennungskataloge dieser Art hat vor allem der Pietismus ausgebildet."

these applied differently to ‘unreborn’ and reborn Christians. “Auch im 17. Jahrhundert spricht der lutherische Protestantismus noch mit zwei Sprachen,” Kittsteiner writes.<sup>139</sup> It could be lenient towards the former, taking the contingencies of life into account. To the reborn, however, a different regime applied. Discipline and obedience were stressed. “Mit den empfohlenen Techniken der Gewissenskontrolle dringen neostoische Grundsätze in den theologischen Diskurs ein; die Gnade ist und bleibt die Grundlage einer Verstärkung des Gewissens, aber der selbst-errungenen Gewissensruhe gelten alle Bemühungen.” The tendency, towards the eighteenth century, was “zu einer generellen Verschärfung der Anforderungen an das Gewissen”.<sup>140</sup>

It is worth noting, in conclusion of this subsection, that there are great similarities between the ‘mission’ of the Reformation and that of the (Spanish) Counter-Reformation – a movement that was not originally a movement against Protestantism, but a Catholic Reformation. Its main goals lay in “the quest for a more adequate clergy – better-trained and better-instructed priests, priests resident in their parishes, (...), pastors fervent and self-sacrificing and missionary-minded, (...); a priesthood uncorrupted and incorruptable, educated and other-worldly”.<sup>141</sup> It sounds almost like a puritan mission statement. Owen Chadwick points out the likeness between the religious experiences of Ignatius of Loyola (1491-1556), founder of the Jesuit order (perhaps *the* driving force of the Counter-Reformation), and those of Martin Luther.<sup>142</sup> Like Luther, Ignatius found that flagellation and austerity “failed to bring peace of mind”. “His conscience began to torture itself, he felt bound in his confession to go over and over the same sins (...). Luther discovered the way of escape by reading the epistle to the Romans. Ignatius discerned his way of escape through a concentration of his iron will upon obedience to the suffering Christ, an obedience formed by obedience to the precepts of his Church. (...) If faith was the ground of all Luther’s work, obedience was the key to Loyola’s.”<sup>143</sup> But we have seen that the practice of Lutheranism was different – in fact, much closer to Loyola’s stress on obedience. And yet, at the same time it is true that, while Jesuit casuistry was often condemned for its laxity, Protestant casuistry could be sensitive to the circumstances of the ‘unreborn’ as well.

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<sup>139</sup> Ibid., 203.

<sup>140</sup> Idem.

<sup>141</sup> Chadwick (1981), 255.

<sup>142</sup> On Loyola, see also Salomon (1963), 254-257, where he discusses the revolutionary character of Loyola’s *Spiritual Exercises*, which differed from older spiritual techniques in focusing on the psychology of social relationships, rather than individual psychology, and on action, rather than contemplation. Loyola also employed the disciplining power of symbols in an unprecedented way.

<sup>143</sup> Ibid., 256-257.

### 3.4. CONCLUDING REMARKS

Protestant thought retained the notion of an innate conscience. It made no less of objective truth than the scholastics, but combined this with a subjective certainty of their own justification – a certainty of which conscience was the source. Protestant casuists, however, emphasized that people could never be (too) certain, and aimed at disciplining people's consciences. They also contributed to the rise of the faculty view of conscience. Religious groups of all denominations made use of the new medium of the printing press, spreading their widely divergent but all equally certain truths in pamphlets. All this, and the religious wars in the context of which it was set, combined to form the background to the seventeenth century critique of conscience to which I turn in the next chapter. This represents both a critique of doctrine *and* a further step in the process of doctrinalization. Importantly, it is the first time in which the nature of the language of conscience (the importance of which I have stressed from the beginning) becomes the focus of philosophical attention.

## 4. Between symbol and doctrine (3): the first wave of criticism - the seventeenth century

“Another doctrine repugnant to Civill Society, is, that *whatsoever a man does against his Conscience, is Sinne*; and it dependeth on the presumption of making himselfe judge of Good and Evill. For a mans Conscience, and his Judgement is the same thing; and as the Judgement, so also the Conscience may be erroneous. (...) [P]rivate Consciences (...) are but private opinions.”  
THOMAS HOBBS, *Leviathan*, chapter 29 (223).

### 4.1. INTRODUCTION

Particular concepts of conscience had been criticized before, by Montaigne for instance, but it was in the seventeenth century that the notion as such was directly attacked for the first time. Thomas Hobbes (1588-1679) was its most severe critic, and Locke (1632-1704) followed in his wake. Hobbes was annoyed, to say the least, by the liberty with which men from different religious persuasions used the term for their own purposes. Both Roman Catholics and Protestants (of various sorts) claimed to have a conscience; what is more: they claimed to have the only *true* conscience. The ‘conscience’ of the others was said to be false. This *popular* use of the term was the basis for Hobbes’ skeptical attitude towards conscience. As both Hobbes and Locke will figure prominently in part II of this book, I will avoid a discussion of their views on liberty of conscience here.

The attack on conscience mounted by Hobbes and Locke was related to circumstances of upheaval, and it was part of a critique on the improper use of language. It is remarkable that the same holds for Bentham’s critique of the notion of conscience, at the close of the eighteenth century. With Hobbes, conscience is for the first time regarded as, first of all, a *word*. This is a significant breakthrough, but it leads him to conclusions I can understand, given the historical context, but do not share. Hobbes provides a perfect illustration of the distrust of symbolic language that I discussed in chapter 2. It is interesting to see that both Hobbes and Locke, for all their criticism of the notion, greatly influenced (and also positively) eighteenth-century authors that restored conscience to its elevated position.

### 4.2. THOMAS HOBBS ON CONSCIENCE, METAPHOR, AND THE ABUSE OF LANGUAGE

As a motto for the first chapter I took the following quotation from Hobbes’ *Leviathan*, in part because it is one of the few explicit references to ‘conscience’ as a metaphorical term:

“When two, or more men, know of one and the same fact, they are said to be CONSCIOUS of it one to another; which is as much as to know it together. And because such are fittest witnesses of the facts of one another, or of a third; it was, and ever will be reputed a very Evill act, for any man to speak against his *Conscience*; or to corrupt, or force another to do so: Insomuch that the plea of Conscience, has been always hearkened unto very diligently in all times. Afterwards, men made use of the same word metaphorically, for the knowledge of their own secret facts, and secret thoughts; and therefore it is Rhetorically said, that the Conscience is a thousand witnesses. And last of all, men, vehemently in love with their own new opinions, (though never so absurd,) and obstinately bent to maintain them, gave those their opinions also that reverenced name of Conscience, as if they would have it seem unlawfull, to change or speak against them; and so pretend to know they are true, when they know at most, but that they think so.”<sup>1</sup>

Hobbes claims that the term ‘conscience’ is still used in the sense of ‘shared knowledge’; that is, knowledge shared with another person. Conscience, understood in this way, conveys relatively objective knowledge – that, at least, is the implication. Secondly, Hobbes says that ‘afterwards’ people started to use the term metaphorically. The example he gives, however, is quite old, as I have pointed out in the first chapter. And then Hobbes distinguishes a third use of conscience, which is the use of the term for people’s own opinions. This use is not said to be metaphorical, but it must be metaphorical at least in the sense that a word with a certain meaning is used to denote something else.

The importance of Hobbes’ criticism of those who used the ‘reverenced name of Conscience’ for something else, namely their own opinions, cannot be underestimated. Hobbes lists the use of metaphors as one of four possible abuses of language (or ‘speech’); when people use words metaphorically they use them “in other sense than that they are ordained for; and thereby deceive others”.<sup>2</sup> Metaphors are not as dangerous as ‘inconstant names’, the names for things that please or displease us, which is different for different persons. The reason for that is that metaphors, unlike inconstant names, ‘profess their inconstancy’.<sup>3</sup> In the case of ‘conscience’, however, it is not at all clear to other people besides Hobbes that they use the term metaphorically. Therefore, we may assume that it actually belongs to the class of ‘inconstant names’, just like ‘wisdom’, ‘justice’, and ‘cruelty’, to name a few. To use the term ‘conscience’ in any but the proper way, then, is a serious matter. Social chaos, in Hobbes’ view, is to a great extent a result of linguistic chaos. He sees his own career as a battle against the incorrect use

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<sup>1</sup> Hobbes (2000), 48 (chapter 7).

<sup>2</sup> Ibid., 26 (ch. 4).

<sup>3</sup> Ibid., 31.

of words, and, Robert Stillman writes, “blames the ‘evil fortune’ of England’s civil wars upon distortions of language and logic”.<sup>4</sup> He points out that “Hobbes repeatedly connects the mid-century’s cultural discord with linguistic discord”, and quotes from *De Cive*: “The tongue of man is a trumpet of war and sedition.”<sup>5</sup>

To understand Hobbes’ reaction to metaphor, we need to take into account a number of things. First of all, we must understand that Hobbes’ philosophy, and especially his moral philosophy, “has the character of mature reflection on an entire culture”, this culture being, with regard to his moral philosophy, “the rich and complex ethical culture of Renaissance humanism”; furthermore: “many of [Hobbes’ moral philosophy’s] central concerns derive from that fact. In particular, its stress on the malleability of beliefs corresponds to the great weight put on the alteration of belief by the moral writers by whom he was most influenced.”<sup>6</sup> Secondly, these ‘moral writers’ “were above all the writers working within or close to the tradition of *classical rhetoric*”, among whom Francis Bacon (1561-1626) was the most important.<sup>7</sup> Bacon influenced Hobbes most notably through his skepticism, and through his advocacy of the new (empirical) sciences. Both authors, Tuck explained, stressed “that the orator secured a change in belief on the part of his audience by manipulating their existing opinions” by means of certain rhetorical devices, and by doing so Bacon and Hobbes “signaled their conviction that there was nothing objective to which the orator could draw attention in order to persuade”.<sup>8</sup> Thirdly, we must realize that ethics, in Hobbes’ view, was “the science or knowledge of ‘Consequences from the Passions of Men’”, and also that ‘passions’ are in part a matter of cognition, “involving beliefs about what sort of power we possess and what we can do with it”.<sup>9</sup> Hobbes, then, was naturally concerned with issues relating to language. Influenced as he was by skeptical thought, and in particular by Bacon, and given the context of the civil wars and religious strife of his time, Hobbes’ concern for social order and stability was inextricably bound up with a concern for the proper use of language. He is an outspoken representative of the anti-symbolic consciousness of which I spoke in 2.2.2.2. It is worth noting that the same urbanization that led to the development and spread of popular mysticism and a more symbolic language

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<sup>4</sup> Stillman (1995), 791-792.

<sup>5</sup> Ibid., 798. See Thomas Hobbes (1991a), 168-169.

<sup>6</sup> Tuck (1996), 175 and 195.

<sup>7</sup> For the influence of Bacon on Hobbes see Stillman (1995), 791, and Tuck (1996), 177, 197-199, and 201.

<sup>8</sup> Tuck (1996), 198.

<sup>9</sup> Ibid., 178, (183 and) 184. Cf. also 179, where it is pointed out that Hobbes (in *De Corpore*) held that in moral philosophy “we are to consider the motions of the mind, namely, *appetite, aversion, love, benevolence, hope, fear, anger, emulation, envy, &c.*; what causes they have, and of what they be causes”.

of conscience, was also an important factor in the increasing power of ‘opinion’, and in the spreading of dissent.<sup>10</sup> At any rate, when Stillman speaks of a ‘hostility to metaphor’, and of an ‘urgency to erase metaphors’, he is not exaggerating.<sup>11</sup>

The proper use of the term ‘conscience’, in Hobbes’ view, made it refer to shared, or public, knowledge – as opposed to the ‘knowledge of secret facts and thought’.<sup>12</sup> This shows Hobbes’ fear of sedition. Now, in his time, no one would have used the term in the way he suggests.<sup>13</sup> This use was long outdated. That makes it all the more surprising that he presents this as the true meaning of the term, and what was in fact much closer to the ordinary understanding as a metaphorical use of the same.<sup>14</sup> “Who, before Hobbes,” Stillman asks, “had ever considered *conscience* a metaphor?”<sup>15</sup> The question is to the point in that sense, that the ordinary understanding of conscience was that it was a divine faculty, enabling each man to distinguish between good and evil, right and wrong. Hobbes’ reacted, to a great extent, to the way ordinary people used the term ‘conscience’.<sup>16</sup> I would agree with Hobbes, if he merely said that people were using a symbolic term; I would not agree that it was a metaphor in the sense in which Hobbes conceived of it, namely as a misapplication of an indicative term. What people did was use a symbolic term, (or use a term symbolically), while forgetting its symbolic nature. Hobbes saw correctly how people often misunderstand the status of the words they use. While words like ‘virtue’ and ‘vice’, in Hobbes’ view, are actually expressions of subjective evaluations (something with which I do not fully agree), people take them to be things in reality, just as in seeing they mistake the image for the thing seen. “[T]hroughout his discussion of moral

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<sup>10</sup> Cf. Southern (1990), 46: “There is something about urban life which provokes dissent.” To this should be added the invention of the printing press, and the thereby enabled use of pamphlets, which increased rapidly in early modern Europe.

<sup>11</sup> Stillman (1995), 791; 799.

<sup>12</sup> Inadvertently, however, he also uses the term differently himself. Discussing the question ‘Why Evil men often Prosper, and Good men suffer’, he says that “whereas the friends of *Job* drew their arguments from his Affliction to his Sinne, (...) he defended himself by the conscience of his Innocence” (Hobbes [2000], 247 [ch. 31]). ‘Conscience’ is here neither used in Hobbes’ ‘proper’ sense, nor in the ‘metaphorical’ sense he rejects; but it does mean something more and other than ‘consciousness’, and it is *private* ‘knowledge’.

<sup>13</sup> Kittsteiner (1995), 235, says Hobbes refers to Thomas Aquinas (“*conscientia dicitur ‘cum alio scientia’*”); this may be, but Thomas did not think of ‘conscientia’ as knowledge shared between human beings.

<sup>14</sup> The association of conscience with secrecy, we have seen, is actually from all times.

<sup>15</sup> Stillman (1995), 800.

<sup>16</sup> But various theologians and philosophers would support this use. As we will see, however, even Joseph Butler, who did conceive of conscience as a faculty, had quite a nuanced view.

matters Hobbes assumes that the actual moral language that human beings employ presupposes (wrongly) the real existence of the entities with which it is concerned – and therefore presupposes the possibility of conflict over the correct description of the entities.<sup>17</sup>

‘Conscience’ provides an example of this popular false realism. The quotation at the beginning of this section is preceded by a discussion and definition of ‘science’ and ‘opinion’, the former being “a knowledge of all the Consequences of names appertaining to the subject in hand” or “knowledge of the consequence of words”, the latter “of the truth of somewhat said, though sometimes in absurd and senselesse words, without possibility of being understood”.<sup>18</sup> Now, ‘conscience’, as used by ordinary people, is such a ‘senseless’ word – ‘senseless’ also in the sense that it does not ‘adequately cohere with a thing’, as Stillman puts it, pointing out the ‘materialist’s pun’.<sup>19</sup> Hobbes, then, precisely illustrates that kind of loss of meaning that occurs when a symbolic relation is mistaken for one of indication – but it is the ‘common people’ who thought of ‘conscience’ as an indicative term, referring to an existent entity, and it is Hobbes who rejected such a use of the term. In effect, the loss of meaning was virtually complete, however, for the use of ‘conscience’ Hobbes himself advocated had virtually no connection with any normal understanding of the term of the preceding thousand years or more.

Hobbes’ ideas of the false realism of language, which also applies to ‘conscience’, and of the metaphorical use of ‘conscience’, may seem at odds with each other. In fact, they are not. People use the term metaphorically, *and* (then) they believe it indicates something real, something more exalted than their own opinions, to which the term was metaphorically applied.<sup>20</sup> By speaking of conscience instead of their opinions, they transfer the aura of objectivity of conscience, ‘properly understood’, to this new private conscience, behind or within which their private opinions hide.<sup>21</sup> Referring to the old, ‘proper’ understanding of ‘conscience’, Hobbes speaks of ‘that revered name’. It might be that Hobbes covertly uses something of the divine aura of the term ‘conscience’ for his own purposes here, but it may very well be that he used the word ‘reverenced’ simply because he strongly disapproved of private or secret knowledge, and by contrast highly approved of public knowledge, which is what he took ‘conscience’ to be. His fear of

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<sup>17</sup> Tuck (1996), 181.

<sup>18</sup> Hobbes (2000), 35, 47–48. Cf. Stillman (1995), 799.

<sup>19</sup> Stillman (1995), 796.

<sup>20</sup> In the rejection of false realism lies an important point of agreement between my own view of conscience and that of Hobbes; but whereas he sees an indicative use as proper, I take the symbolic expression of experiences of conscience to be primary. It is not in a metaphorical (or, generally, a symbolic) use of the term that loss of meaning lies, but in forgetfulness of the symbolic nature of the term.

<sup>21</sup> Feldman (2001), 27.



metaphor and his fear of the private conscience, then, derive from one and the same source. Metaphor is, in a sense, an idiosyncratic (and therefore initially private) use of words; it conceals true meaning. The private conscience is also an instrument to conceal 'knowledge' from view. And private conscience and metaphor are deeply connected: in a sense, as Feldman points out, the inner space of the private conscience, or the sphere of private opinion, came into existence through the metaphorical use of the term 'conscience'.<sup>22</sup> Hobbes speaks of 'their own *new* opinions' – in a very literal sense they may not be new, but in another they are, for they are now the object of the false realism instantiated in the understanding of 'conscience'. Private opinions are now 'conscience'; they have acquired a new status. Conscience lends them its power, and from that moment on, 'opinion' is a force to be reckoned with.

Hobbes' reaction to the contemporary use of the term 'conscience' was a consequence of processes of doctrinalization: conscience was generally seen as a 'solid' entity, but Hobbes could find no entity to which the term referred. When people spoke of 'my conscience', they could in fact mean nothing more than 'my opinions'. People of various religious denominations also thought they knew what the contents of a real conscience were – doctrine was dominant there, too. But Hobbes countered with an indicative understanding of conscience; and he shared with his opponents the quest for and the belief in the attainability of certainty. His work was intended to move from the improper use towards the proper use of language. Stillman writes: "Hobbes seeks to purify language of equivocation, and thereby to cleanse the body politic of a primary source of contamination."<sup>23</sup> Metaphor, according to Hobbes, was a cause of 'absurd assertions', not to be 'admitted' in 'reckoning, and seeking of truth'; for that purpose, one needed 'words proper'.<sup>24</sup> In his own way, then, Hobbes strove for the fixation of meaning. But in his case, there could be no other basis for such fixation than general agreement. Hence, Hobbes writes: "they *are said to be* conscious of it...", and "it was, and ever will *be reputed* a very evil act...".<sup>25</sup>

The same goes for moral principles. Hobbes was not a moral relativist like Montaigne, but countered such relativism by pointing out the actual agreement between people on certain matters. "But the ethical principles evident even to the meanest capacity are likely to be of an extremely exiguous kind," Tuck notes, and this remained a problem for

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<sup>22</sup> Idem.

<sup>23</sup> Stillman (1995), 797.

<sup>24</sup> Hobbes (2000), 34-35 (ch. 5).

<sup>25</sup> Tuck (1996), 200: "[F]or Hobbes and his circle, moral matters were inextricably bound up with what 'the world' says. What 'the world' called valor, or vanity, mattered most to Hobbes (...). A perceived agreement on moral matters was the foundation of morality."

Hobbes.<sup>26</sup> These principles (for instance: ‘everyone has a right to preserve himself’) resembled those of *synderesis* in their generality.<sup>27</sup> Their application would generate evident problems.

The solution lies in an agreement on macro-level: the social contract. When people, seeking peace and protection, pass from the state of nature to the civil state, they transfer some of their natural rights to the sovereign – all natural rights except those one can never renounce, like the right to life (and self-defence).<sup>28</sup> In the societal state, there is no place for the exercise of one’s own judgement in moral matters, if this entails illegal action. There is now only one conscience left that counts, and that is that of the sovereign. Hence:

“Another doctrine repugnant to Civill Society, is, that *whatsoever a man does against his Conscience, is Sinne*, and it dependeth on the presumption of making himselfe judge of Good and Evill.”<sup>29</sup>

A man’s conscience is nothing but his judgement, his private opinion, Hobbes says here, adopting the new, ‘metaphorical’ use of the term as the meaning of ‘conscience’. And as this judgement is fallible, conscience may err too. Hence, there is no reason to accept Abelard’s idea that there is no sin but against one’s conscience, of which dictum Hobbes gives us a variant, with a somewhat different emphasis.<sup>30</sup> Kittsteiner points out that Hobbes’ attack on conscience does not just pertain to the ‘conclusio’, that is, to the application (‘conscientia’) of in themselves infallible principles (‘*synderesis*’). “Der Angriff von Hobbes gilt der Wahrheit der Synteresis; in diesem Licht muß der Satz ‘Auctoritas, non veritas facit legem’ betrachtet werden.”<sup>31</sup> Private judgement, by agreement (the social contract), has made way for the public conscience, which is the law laid down by the sovereign.<sup>32</sup> All citizens

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<sup>26</sup> *Ibid.*, 188.

<sup>27</sup> There is also a statement reminiscent of the principle of ‘*synderesis*’ in *On Man (De Homine)*: “God himself, because He hath made men rational, hath enjoined the following law on them, and hath inscribed it in all hearts: that no one should do unto another that which he would consider inequitable for the other to do unto him.” (Hobbes [1991b], 73 [XIV.5].)

<sup>28</sup> Hobbes (2000), 93 (ch. 14).

<sup>29</sup> *Ibid.*, 223 (ch. 29).

<sup>30</sup> Cf. Kittsteiner (1995), 236.

<sup>31</sup> *Ibid.*, 237.

<sup>32</sup> Hobbes (2000), 223 (ch. 29): “[T]hough he that is subject to no Civill Law, sinneth in all he does against his Conscience, because he has no other rule to follow but his own reason; yet it is not so with him that lives in a Common-Wealth; because the Law is the publique Conscience, by which he hath already undertaken to be guided. Otherwise in such diversity, as there is of private Consciences, which are but private opinions, the Common-wealth must needs be distracted, and no man dare to obey the Soveraign Power, farther than it shall seem good in his own eyes.”

are obligated to obey the sovereign, even if in their own conscience they disagree. Besides, human laws do not touch a person's conscience at all.<sup>33</sup>

According to Kittsteiner, this does not lead to the existence of a "großartiger privater Binnenraum, der sogar zum 'Todeskeim' für den Leviathan werden könnte", for Hobbes, who 'distrusted the conscience too much to attempt to reform it', filled its place with "den Glauben, daß Jesus der Erlöser ist".<sup>34</sup> This belief, 'that Jesus is the Christ', is Hobbes' solution to the problem of whether obedience to God and obedience to the sovereign can ever clash. "Die Wiederezurechtbringung Aller entzieht dem Gewissen seinen richtenden Maßstab, der über die Aufgabe der Friedenssicherung hinausginge (...)."<sup>35</sup> This may be true theoretically, but it seems to me that Hobbes' separation of conscience and law, of private and public morality, would be of greater consequence – as would his distrust of human nature, that lay at the basis of it all.

### 4.3. JOHN LOCKE

#### 4.3.1. Introduction

Both in his thought on conscience and in his use of the term, Locke was highly ambiguous. It is not just that over time he changed his views concerning liberty of conscience – what he says about conscience belongs even more clearly to this context than in Hobbes' case – but he transmits different messages in works of the same period, and sometimes in one and

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<sup>33</sup> So Hobbes explains in *The Elements of Law*; see Martinich (1995), lemma 'conscience'. There is also a more positive side to this, to which Edward G. Andrew draws attention: Hobbes condemned the practice of inquisition; "The inner realm of conscience is sacrosanct, in that individuals can be tried and punished only for their deeds, not for their thoughts, on the basis of public evidence, not on private intentions." In the same article, Andrew explains how Hobbes created a space for conscience *within* the law, while Locke found one *without* the law. This space within the law lay in the jury system, where juries were to be allowed to judge according to their consciences, which means they could not be punished for giving a verdict contrary to what the judge had in mind. They played a role in determining *law*, not just fact, in Hobbes' view. Andrew explains how this is consistent with Hobbes' command theory of law. Basically, with his egalitarian view of the jury system, Hobbes sought to counter the danger of bribed or pressured juries, and biased judges. His distrust of people with certain interests led him to opt for a 'democratic' solution, which also shows in his view that people had the right to reject jurors, if they thought them biased. People could choose their own jury. See: Andrew (1999); the quotation is from 217. For a defence of Hobbes' position, see also Ewin (1991), especially 47-49, where he nuances the opposition between 'public procedure' and 'private conscience'.

<sup>34</sup> Kittsteiner (1995), 240.

<sup>35</sup> *Ibid.*, 239-240.

the same work (as did Hobbes, occasionally). I will leave his thoughts on freedom of conscience for part II, and confine myself here to his thought pertaining to conscience and his use of the term in separation from his thought on toleration.

‘His use of the term’ could also read ‘his (lack of) use of the term’, for, as the *Locke Dictionary* states, ‘conscience’ “is not a term used very often by Locke”, and “[a]fter 1690, it fades out of his use”.<sup>36</sup> It should be noted, though, that most of his major works (both published and unpublished) were written before that year, and that the term is still abundantly present in the second (1690) and third (1692) letter concerning toleration, and that it also occurs a number of times in *The Reasonableness of Christianity* (1695). It seems that Locke adapted his terminology very much to the purpose of the text, as well as to the audience for which he wrote. Where he confronts the same people Hobbes reacted against, who used the term ‘conscience’ much too liberally (in Hobbes’ and Locke’s view, at any rate), he is clear about what conscience is, namely “nothing but an opinion of the truth of any practical position, which may concern any actions as well moral as religious, civil as ecclesiastical”.<sup>37</sup> Similarly, in his less popular, more strictly philosophical work *An Essay Concerning Human Understanding* (1689), he defines conscience as “nothing else, but our own Opinion or Judgment of the Moral Rectitude or Pravity of our own Actions”.<sup>38</sup> In his works concerning toleration, he seems to be less concerned with the meaning of the term, and to feel quite free to use it, simply because his purpose is not to set people straight regarding the correct use of the term, but to make a case for toleration.

#### 4.3.2. Locke on the abuse of language; the attack on the notion of innate ideas

A strong concern for the proper use of terms, similar to that which we found in Hobbes, does inform his *Essay Concerning Human Understanding*. Children are taught the ‘names’ of ‘simple ideas or substances’ by people pointing to the things and then naming them, so Locke explains. But this procedure does not work for ‘mixed modes’, concepts constructed artificially by combination of (words for) simple ideas. With them, and “especially the most material of them, *moral words*, the sounds are usually learned first”. It is mainly by ‘their own observation and industry’ that children are to find out the meaning of these words,

“which being little laid out in the search of the true and precise meaning of Names, these moral Words are, in most Men’s mouths, little more than

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<sup>36</sup> Yolton (1993), lemma ‘conscience’.

<sup>37</sup> Idem; quoted from the first *Tract on Government* in John Locke, *Two Tracts on Government*, Philip Abrams (ed.), Cambridge University Press, Cambridge, 1967, 138.

<sup>38</sup> Locke (1979), 70 (Book I, ch. III, § 8).

bare Sounds; or when they have any, 'tis for the most part but a very loose and undetermined, and consequently obscure and confused signification.”<sup>39</sup>

Book 10, chapter 10 of the *Essay Concerning Human Understanding* is concerned with the abuse of words, of which there are many varieties. The first of these is to use ‘words without any, or without clear ideas’; there are ‘two sorts’ of this abuse. In the first case, we are dealing with words that on examination are found ‘not to stand for any clear and distinct ideas’. “These, for the most part, the several sects of philosophy and religion have introduced.” Such words may be called ‘insignificant terms’.

“II. Others there be, who extend this abuse yet farther, who take so little care to lay by Words, which in their primary notation have scarce any clear and distinct *Ideas* which they are annexed to, that by an unpardonable negligence, they familiarly *use Words*, which the Propriety of Language has affixed to very important *Ideas*, *without any distinct meaning* at all. *Wisdom, Glory, Grace*, etc. are Words frequent enough in every Man’s Mouth; but if a great many of those who use them, should be asked, what they mean by them? they would be at a stand, and not know what to answer: A plain proof, that though they have learned those Sounds, and have them ready at their Tongues end, yet there are no determined *Ideas* laid up in their Minds, which are to be expressed to others by them.”<sup>40</sup>

(Skipping the third,) a fourth possible abuse is to take words for things, to which especially those who firmly believe in the ‘perfection of any received hypothesis’ are most liable.<sup>41</sup> Without going into all kinds of other possible abuses, it may be noted that ‘conscience’ may often be abused in some of those ways, in particular those mentioned above. This is clearly suggested by the following remark:

“Some confused or obscure Notions have served their turns; and many who talk very much of *Religion* and *Conscience*, of *Church* and *Faith*, of *Power* and *Right*, of *Obstructions* and *Humours*, *Melancholy* and *Choler*, would, perhaps, have little left in their Thoughts and Meditations, if one should desire them to think only of the Things themselves, and lay by those Words, with which they so often confound others, and not seldom themselves also.”<sup>42</sup>

Note that Locke says that these terms *were* useful before, but then they became the buzzwords of the period, which entailed an inflation of meaning

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<sup>39</sup> *Ibid.*, 480 (Book III, ch. IX, § 9).

<sup>40</sup> *Ibid.*, ch. X, § 2-3.

<sup>41</sup> This is more or less what Whitehead has called the ‘fallacy of misplaced concreteness’.

<sup>42</sup> Locke (1979), 575 (Book IV, ch. V, § 4).

– which is often the fate of words that come into fashion and are then used much more often than before. Secondly, we should note that Locke adheres to an *indicative* understanding of the term ‘conscience’; the word should correspond with an idea, or even a ‘thing’. Locke does not share the symbolism of the people he criticizes. Perhaps he would not have shared it, even if it had been employed with moderation; but as it is, it seems that his reaction was primarily the consequence of the inflation of meaning that had turned ‘conscience’ – for Locke, but according to Locke also for those who loved the term so much – into an empty shell.

Locke’s criticism is mainly directed against the authors of various pamphlets, a type of literature that boomed in those days. It is at them, too, that his famous attack on innate ideas was aimed, rather than at René Descartes, as students are often taught. He writes: “It is an established Opinion amongst some Men, That there are in the Understanding certain *innate Principles*; some primary Notions, *Kovai ennoia*, Characters, as it were stamped upon the Mind of Man, which the Soul receives in its very first Being; and brings into the World with it.”<sup>43</sup> He also calls them ‘principles’ or ‘truths’ ‘written on their Hearts’, ‘Propositions stamped on their Minds’, and ‘Characters, and Marks of Himself [God], engraven in their minds by his own finger’.<sup>44</sup> Yolton writes: “Locke was referring to a view that can be found in many tracts and pamphlets earlier in this century. The language he used to describe that view is borrowed from those pamphlets. The metaphor of the ‘finger of God’ can be found in Richard Carpenter’s *The Conscionable Christian* (1623): conscience is spoken of as a book ‘euen in thine owne bosome, written by the finger of God, in such plaine Characters, and so legible, that though thou knowest not a letter in any other booke, yet thou maist reade this’ (43-44).”<sup>45</sup> Locke was not the only one with scruples concerning the use of words. The cautious Cambridge Platonist Henry More, in his *An Antidote against Atheisme* (1653), opts for the term ‘implicit knowledge’, denying “the more vivid language of ‘*Ideas* flaring and shining to the *Animadersive faculty* like so many *Torches* or *Starres* in the *Firmament* to our outward sight’ and ‘*Red Letters* or *Astronomical Characters* in an *Almanack*’ (p. 13)”. Samuel Parker not only distanced himself from this kind of language, but rejected the notion of innate ideas altogether. In his *A Demonstration of the Divine Authority of the Law of Nature* he complained “that ‘the plain Account of it [the Divine Authority etc.] has been obscured by nothing more, then that it has alwaies been described and discoursed of in metaphorical and allusive

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<sup>43</sup> Ibid., 48 (Book I, ch. II, § 1).

<sup>44</sup> And he uses similar expressions in his early work; see Yolton (1993), lemma ‘innate ideas’ (110-111).

<sup>45</sup> Idem.

Expressions, such as *Engravings*, and *Inscriptions*, and the *Tables of the Heart* (p.5).<sup>46</sup>

In his attack on the idea of innate practical principles, Locke discards the notion of an innate conscience.<sup>47</sup> “The great Principle of Morality, *To do as one would be done to*, is more commended, than practised,” Locke notes. What may prevent us from breaking this rule, for surely it is a moral rule? Conscience, perhaps?

“§ 8. To which, I answer, That I doubt not, but without being written on their Hearts, many Men, may, by the same way that they come to the Knowledge of other things, come to assent to several Moral Rules, and be convinced of their Obligation. Others also may come to be of the same Mind, from their Education, Company, and Customs of their Country; which, *Perswasion however got, will serve to set Conscience on work*, which is nothing else, but our own Opinion or Judgment of the Moral Rectitude or Pravity of our own Actions. And if Conscience be a Proof of innate Principles, contraries may be innate Principles: Since some Men with the same bent of Conscience, prosecute what others avoid.”<sup>48</sup>

Locke, then, thinks that there are other ways by which men can come to hold moral principles, than through the operation of an innate conscience. And as we see that the dictates of conscience differ among people, it is not likely to be an innate principle, or there must be opposing innate principles. Another argument against the innateness of conscience is that if it were innate, and ‘stamped upon [people’s] minds’, it ought to be very hard to transgress its dictates. Practice, however, teaches us otherwise.

“View but an Army at the sacking of a Town, and see what Observation, or Sense of Moral Principles, or what touch of Conscience, for all the Outrages they do.”<sup>49</sup>

Yet it does not surprise Locke “that *Doctrines*, that have been derived from no better original, than the Superstition of a Nurse, or the Authority of an old Woman; may, by length of time, and consent of Neighbours, *grow up to the dignity of Principles* in Religion or Morality”.<sup>50</sup> For children are taught such doctrines when they are still very young, they are confirmed time and again, and form the ‘basis and foundation’ for their ‘religion and manners’. As

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<sup>46</sup> Idem.

<sup>47</sup> In doing so, he went against the traditional interpretation of Romans 2:14-15, which made his theory hard to swallow for many who took that passage as evidence for the existence of an innate conscience. See Schneewind (1995), 201.

<sup>48</sup> Locke (1979), 70 (Book I, ch. III, § 8).

<sup>49</sup> Idem (Book I, ch. III, § 9).

<sup>50</sup> Ibid., 81 (Book I, ch. III, § 22).

people grow up and ‘reflect on their own minds’, they cannot find anything older in it than

“those Opinions, which were taught them, before their Memory began to keep a Register of their Actions, or date or time, when any new thing appeared to them; and therefore make no scruple to *conclude*, *That those Propositions, of whose knowledge they can find in themselves no original, were certainly the impress of God and Nature upon their Minds; and not taught them by anyone else.*”<sup>51</sup>

In this way a man may come to “*stamp the Characters of Divinity, upon Absurdities and Errors*”, and “to take Monsters lodged in his own brain, for the Images of the Deity”.<sup>52</sup>

### 4.3.3. Moral philosophy

Locke’s alternative to an innate conscience as the source of moral knowledge is a combination of three things: experience (empiricism), Reason (rationalism), and Revelation (the Bible).<sup>53</sup> As the latter can tell us nothing that is contrary to Reason, however, experience and Reason are most important. Experience is of two kinds: firstly there is *sensation*, which is the perception of external objects, and secondly there is *reflection*, which is the perception of the mind’s own operations. Both result in *ideas*. Ideas can be either simple or complex. In the first case, the mind is passive in perceiving them; in the latter, the mind actively constructs complex ideas out of the variation or combination (in one way or another) of simple ones. This activity results in modes, substances, or relations. Modes can be either simple or mixed; the latter being the case when the mode ‘contains a combination of several ideas of several kinds’.<sup>54</sup> Moral words, as I have said before, belong to this category. It is worth noting that for Locke, “the most usual way” of coming by these complex ideas is “by *explaining the names of Actions we never saw, or Notions we cannot see*”, which comes down to an enumeration of all its constituent ideas.<sup>55</sup> Now, moral ideas, Schneewind notes, “are harder to clarify, and ‘commonly more complex,’ than those involved in mathematics”.<sup>56</sup> Nevertheless, they are capable of demonstration. In fact, “*Morality is the proper Science, and Business of Mankind in general*”.<sup>57</sup> To this

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<sup>51</sup> Ibid., 82 (Book I, ch. III, § 23).

<sup>52</sup> Ibid., 83-84 (Book I, ch. III, § 26).

<sup>53</sup> It is important to attend to this, if only briefly, because later authors adopted much of Locke’s views on morality, while reintroducing conscience (sometimes under the guise of the ‘moral sense’).

<sup>54</sup> Locke (1979), 165 (Book II, ch. XII, § 5).

<sup>55</sup> Ibid., 292 (Book II, ch. XXII, § 9).

<sup>56</sup> Schneewind (1995), 205-206; Locke (1979), 489 (Book III, ch. IX, § 22).

<sup>57</sup> Locke (1979), 646 (Book IV, ch. XII, § 11).



purpose, we have to employ 'Definitions', "setting down that Collection of simple *Ideas*, which every 'Term shall stand for; and then using the Terms steadily and constantly for that precise Collection".<sup>58</sup> That does not mean that morality is based on convention. The 'only true touchstone of *moral Rectitude*' is the Divine Law.<sup>59</sup> God is the foundation of morality, and reason tells us so:

"The *Idea* of a supreme Being, infinite in Power, Goodness, and Wisdom, whose Workmanship we are, and on whom we depend; and the *Idea* of our selves, as understanding, rational Beings, being such as are clear in us, would, I suppose, if duly considered, and pursued, afford such Foundations of our Duty and Rules of Action, as might place *Morality amongst the Sciences capable of Demonstration*: wherein I doubt not, but from self-evident Propositions, by necessary Consequences, as incontestable as those in Mathematicks, the measures of right and wrong be made out, to any one that will apply himself with the same Indifferency and Attention to the one, as he does to the other of these Sciences."<sup>60</sup>

This could have been Kant's mission statement. Locke himself did not pursue the demonstration very far. His moral philosophy can be summarized quite briefly:

"Good and Evil (...) are nothing but Pleasure and Pain, or that which occasions, or procures Pleasure or Pain to us. *Morally Good and Evil* then, is only the Conformity or Disagreement of our voluntary Actions to some Law, whereby Good or Evil is drawn on us, from the Will and Power of the Law-maker; which Good and Evil, Pleasure or Pain, attending our observance, or breach of the Law, by the Decree of the Law-maker, is that we call *Reward* and *Punishment*."<sup>61</sup>

Moral rules (or: laws) are of three sorts: divine law, civil law, and the law of opinion or reputation. On the first depend duty and sin, on the second

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<sup>58</sup> Ibid., 552 (Book IV, ch. III, § 20).

<sup>59</sup> Ibid., 352 (Book II, ch. XXVIII, § 8).

<sup>60</sup> Ibid., 549 (Book IV, ch. III, § 18). Cf. Schneewind (1995), 205. Locke's mentioning of 'self-evident propositions' is significant, for these are propositions that are intuitively known. Locke may not have believed in innate knowledge, but he did believe in intuitive knowledge, which is "the perception of the certain Agreement, or Disagreement of two *Ideas* immediately compared together" (Ibid., 685 [Book IV, ch. XVII, § 17]). Such knowledge is quite important, for "*no Proposition can be received for Divine Revelation*, or obtain the Assent due to all such, *if it be contradictory to our clear intuitive Knowledge*" (Ibid., 692 [Book IV, ch. XVIII, § 5]).

<sup>61</sup> Ibid., 351 (Book II, ch. XXVIII, § 5).

criminality, on the third virtue and vice.<sup>62</sup> But, as I quoted before, the divine law is ‘the only true touchstone of moral rectitude’; the meaning of moral good and evil depend on the Divine Will.<sup>63</sup> Moral knowledge is derived from a combination of perception, reason, and revelation. Once the moral words are defined (in agreement with Divine Law), conceptual analysis will tell us what is wrong and what is right.

If moral knowledge, then, was not a problem, moral motivation was. It seems that Reason, by itself, is not able to instill a clear sense of right and wrong in people’s minds, and to make them act according to the moral rules.<sup>64</sup> People are only motivated by what affects their happiness. For this reason, religion is necessary – in particular the idea of God and the belief in an afterlife, in which people will be either rewarded or punished, depending on their behaviour on earth.<sup>65</sup> Locke’s views concerning moral motivation also modify his ideas about the discovering powers of reason. As Schneewind points out, Locke’s doubts in this area “require us to interpret with caution those passages in which Locke says that the law of nature is ‘plain and intelligible to all rational Creatures’ (I [*Two Treatises of Government*] II.ix.124: 369). This is no slip into a rationalist claim that the laws are self-evident. But neither is it the claim that knowledge of the laws of nature is equally available to everyone alike. The laws are plain enough so that the day-laborer and the spinster can obey, once they have been instructed. But they will not necessarily be able to see for themselves why the laws are binding on them. They will be obeying God by obeying other men.”<sup>66</sup>

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<sup>62</sup> In the realm of virtue and vice lie the seeds of the moral realm that would come to criticize the political; here lies the beginning of the utopian force of society (the social conscience) against government (Koselleck [1973], 42-43).

<sup>63</sup> This at once explains and obscures the meaning of the following passage (from the *Essay*, 344 [Book II, ch. XXVII, § 22]): “For, though punishment be annexed to personality, and personality to consciousness, and the drunkard perhaps be not conscious of what he did, yet human judicatures justly punish him; because the fact is proved against him, but want of consciousness cannot be proved for him. But in the Great Day, wherein the secrets of all hearts shall be laid open, it may be reasonable to think, no one shall be made to answer for what he knows nothing of, but shall receive his doom, his conscience accusing or excusing him.” It explains the difference between the judgement according to Divine Law and that according to human law, but it obscures why the former judgement would depend on one’s subjective awareness of sin, rather than objective sinfulness. Locke seems to disagree with Hobbes’ rejection of Abelard’s idea that there is no sin but against the conscience – but maybe he cannot be bothered about it, as long as sinfulness is understood as irrelevant for human law. Concerning Locke’s voluntarism, see Schneewind (1995), 206.

<sup>64</sup> Schneewind (1995), 218.

<sup>65</sup> *Ibid.*, 215, 218-219.

<sup>66</sup> *Ibid.*, 219. His pessimism with regard to the power of reason would grow even stronger; see Greene (1991b), 643.

#### 4.3.4. Education

Let us turn to Locke's (highly influential) thoughts concerning education, then. Though *Some Thoughts Concerning Education* was written several years before, it first appeared in the bookshops, anonymously, in 1693.<sup>67</sup> It was meant as a 'small light' for those parents "whose Concern for their dear little Ones makes them so irregularly bold, that they dare venture to consult their own Reason, in the Education of their Children, rather than wholly to rely upon Old Custom".<sup>68</sup> It was also meant to reach a large audience, as is evident from his translation of the first sentence, which was originally in Latin, into English. *Mens sana in corpore sano* now read 'A sound mind in a sound body', and this provided the basic structure of the text, of which the first 30 paragraphs deal with the health of the body, and the rest (186 paragraphs) with that of the mind. After instructions on clothes, the washing of feet ("I would also advise his *Feet to be washed* every Day in cold Water; and to have his *Shoes* so thin, that they might leak and *let in Water*, when ever he comes near it."<sup>69</sup>), swimming, the importance of being in the open air (and being able to breathe freely, which means that clothes should not be too tight), diet, drinking ("only Small Beer"), fruit consumption (fruits like melons, peaches, plums, and grapes should be kept from children, because of their 'very tempting Taste'), sleep (Locke recommends a hard bed), and 'Going to Stool', Locke turns to the mind:

"Due Care being had to keep the Body in Strength and Vigor, so that it may be able to obey and execute the Orders of the *Mind*; the next and principal Business is, to set the *Mind* right, that on all Occasions it may be disposed to consent to nothing, but what may be suitable to the Dignity and Excellency of a rational Creature."<sup>70</sup>

It is clear from this passage that Locke believed that people could to a large extent be *made* the way one saw fit. Children's minds were like a *tabula rasa*, a blank sheet, a 'white Paper', to be filled with the letters we wish to inscribe on them. A children's mind is like "Wax, to be moulded and fashioned as one pleases".<sup>71</sup>

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<sup>67</sup> Axtell (ed.) (1968), 14.

<sup>68</sup> Locke (1968), 325 (§ 216). It should be noted that Locke writes mainly for the parents of *sons* (of the higher and higher middle classes): "[T]he principal Aim of my Discourse is, how a young Gentleman should be brought up from his Infancy, which, in all things will not so perfectly suit the Education of *Daughters*; though where the Difference of Sex requires different Treatment, 'twill be no hard matter to distinguish." (117, § 6).

<sup>69</sup> *Ibid.*, 117-118 (§ 7).

<sup>70</sup> *Ibid.*, 137 (§ 31).

<sup>71</sup> *Ibid.*, 325 (§ 216); cf. 114 (§ 1): "[O]f all the Men we meet with, Nine Parts of Ten are what they are, Good or Evil, useful or not, by their Education. 'Tis that which

Education aims at virtue.<sup>72</sup> This entails not just virtuous behaviour, but a virtuous mind; the ‘young Man’ should acquire “a true relish of it, and [place] his Strength, his Glory, and his Pleasure in it”.<sup>73</sup> Yet, on the whole, Locke places no explicit emphasis on thoughts and intentions – especially not if we compare his work with that of Kant, which, nevertheless, shows great similarities with Locke’s work.<sup>74</sup> The foundation of virtue is the notion of God:

“As the Foundation of [virtue], there ought very early to be imprinted on his Mind a true Notion of *God*, as of the independent Supreme Being, Author and Maker of all Things, from whom we receive all our Good, who loves us, and gives us all Things.”<sup>75</sup>

At first, no further explanations should be given; in fact, it would generally be better if people accepted such a notion without asking much further about “a Being, which all must acknowledge incomprehensible”.<sup>76</sup> If this is the foundation of all virtue, the road to virtue lies in self-denial. There is a very strong Stoic influence in Locke’s work on education, which shows itself in such statements as these:

“As the Strength of the Body lies chiefly in being able to endure Hardships, so also does that of the Mind. And the great Principle and Foundation of all Vertue and Worth, is placed in this, That a Man is able to *deny himself* his own Desires, cross his own Inclinations, and purely follow what Reason directs as best, tho’ the Appetite lean the other way.”<sup>77</sup>

“It seems plain to me, that the Principle of all Vertue and Excellency lies in a Power of denying ourselves the Satisfaction of our own Desires, where Reason does not authorize them.”<sup>78</sup>

We are to acquire and improve this power through custom and *early* practice. Locke often emphasizes that education should begin early, when

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makes the great Difference in Mankind.”, and 115 (§ 2): “I imagine the Minds of Children as easily turned this or that way, as Water it self...”; cf. also Locke (1979), 63-64 (Book I, ch. II, §27).

<sup>72</sup> Locke (1968), 170 (§ 70), 241 (§ 135), and 313 (§ 200).

<sup>73</sup> *Ibid.*, 170 (§ 70).

<sup>74</sup> See Kant [1803]. Note that his definition of conscience in the *Essay* also only mentions actions, not thoughts. On the other hand, note that Locke thinks that shame, not pain, should be the most effective element in punishment.

<sup>75</sup> Locke (1968), 241 (§ 136).

<sup>76</sup> *Ibid.*, 242 (§ 136).

<sup>77</sup> *Ibid.*, 138 (§ 33).

<sup>78</sup> *Ibid.*, 143 (§ 38).

children's minds are most susceptible to learning, and least influenced by undesirable doctrines and bad examples. Education is a process by which children are enabled to make the transition from being disciplined to self-discipline, from heteronomy to autonomy. Because of their 'Want of Judgment', children 'stand in need of Restraint and Discipline'.<sup>79</sup> This should not be misunderstood, however. Discipline does not mean that a harsh regime is imposed on children, a regime based on frequent chastisement. Children "should look upon their Parents as their Lords, their Absolute Governors", they should hold them in awe and respect. This means that parents should 'carry a strict hand over children', but it does not entail 'Imperiousness and Severity'.<sup>80</sup> "[T]hose children who have been most *chastised*, seldom make the best Men."<sup>81</sup> Their spirits should not be 'abased and *broken* much'; this would give them 'dejected minds' and 'low spirits', whereas the child's spirit should be kept up.<sup>82</sup> Locke emphasizes time and again that beating and other 'servile punishments' are generally to be avoided, not in the least because they have adverse effects.<sup>83</sup> In fact,

"there is one, and but one Fault, for which (...) Children should be Beaten; and that is, *Obstinacy* or *Rebellion*. And in this too, I would have it ordered so, if it can be, that the shame of the Whipping, and not the Pain, should be the greatest part of the Punishment. Shame of doing amiss, and deserving Chastisement, is the only true Restraint belonging to Vertue."<sup>84</sup>

Like Kant would later, Locke stresses that reward and punishment should not become children's motives for action. Corporeal punishment will often have that effect, which means that the child comes "to cherish that Principle in him, which it is our Business to root out and destroy", namely to seek his own (sensual) pleasure. The 'Shame of Suffering for having done Amis' should be more effective than the pain of punishment.<sup>85</sup>

Parents should be reasonable, set a good example for their children, and earn their respect by being strict but fair. Children are able to see when their parents act out of caprice, or when they have lost their temper. Respect and awe are instilled on children's minds by fairness, calm and deliberate action, and the strict observance of a *small* number of rules. When a child is punished by a parent it respects and whose authority it accepts, it will be ashamed, and (if old enough) see that it deserved punishment; that is, it will see the reasonableness of its punishment.

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<sup>79</sup> Ibid., 145 (§ 40).

<sup>80</sup> Ibid., 145-146 (§ 40, 41, 43).

<sup>81</sup> Ibid., 147 (§ 43).

<sup>82</sup> Ibid., 148 (§ 46).

<sup>83</sup> Ibid., 147 (§ 44), 148 (§ 47), 172 (§ 72), 176 (§ 77).

<sup>84</sup> Ibid., 177 (§ 78).

<sup>85</sup> Ibid., 149 (§ 48).

“Good and Evil, *Reward* and *Punishment*, are the only Motives to a rational Creature: these are the Spur and Reins, whereby all Mankind are set on work, and guided, and therefore they are to be made use of to Children too. For I advise their Parents and Governors always to carry this in their Minds, that Children are to be treated as rational Creatures.”<sup>86</sup>

This entails using the right sort of reward and punishment: ‘esteem’ and ‘disgrace’. A ‘Love of Credit’ and an ‘Apprehension of Shame and Disgrace’ will ‘put into them the true Principle’ and ‘incline them to the right’.<sup>87</sup> The ‘Fear and Awe’ children should feel for their parents when they are young, and which gives parents ‘the first Power over their Minds’, should give way to ‘Love and Friendship’ later, which enables them to hold this power.<sup>88</sup>

In line with the importance Locke here ascribes to esteem in the education of children, he says about ‘Reputation’:

“That though it be not the true Principle and Measure of Vertue, (for that is the Knowledge of a Man’s Duty, and the Satisfaction it is to obey his Maker, in following the Dictates of the Light God has given him, with the Hopes of Acceptation and Reward) yet it is that, which comes nearest to it: And being the Testimony and Applause that other People’s Reason, as it were by a common Consent, gives to vertuous and well-ordered Actions, it is the proper Guide and Encouragement of Children, till they grow able to judge for themselves, and to find what is right by their own Reason.”<sup>89</sup>

The approval and disapproval of others, and the consequent gladness or shame, are critical to the acquisition of virtue. The final goal, however, is to transcend this ‘social’ stage, so to speak, and to come to rely upon one’s own Reason. One might be tempted to say ‘conscience’ instead of ‘Reason’, but that would be a mistake. When Locke speaks of ‘the Dictates of the Light God has given [man]’, he means ‘Reason’, not ‘conscience’.<sup>90</sup> In fact, Locke does not even once use the word ‘conscience’ in the whole work on education.<sup>91</sup> He does use the metaphor of ‘the Candle of the Lord’, which

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<sup>86</sup> Ibid., 152 (§ 54).

<sup>87</sup> Ibid., 152-153 (§ 56).

<sup>88</sup> Ibid., 146 (§ 42).

<sup>89</sup> Ibid., 155-156 (§ 61).

<sup>90</sup> Cf. the second and third letter concerning toleration, in which he often speaks of the ‘light of their own reason, and dictates of their own consciences’.

<sup>91</sup> Axtell notes that “Locke’s ethics always had a pragmatic element in them, because he, like Addison, saw that young English gentlemen would not be wholly motivated by the high, idealistic considerations of ‘inner conscience’, ‘esteem’, and whatever else was promised as a proper reward for good behavior. So material rewards were added as further inducements to study (Addison) and moral good naturedness

was traditionally associated with ‘synderesis’, but only to refer to ‘the light of Reason’ – though, on the other hand, to discover the truths of ethics was Reason’s main business.<sup>92</sup> He does use the traditional language of ‘synderesis’, when he writes about “the Candle of the Lord set up by himself in Men’s minds, which it is impossible for the Breath or Power of Man wholly to extinguish”.<sup>93</sup>

Locke envisaged quite a liberal sort of education. Young children should be left to themselves and allowed to play, so long as this remained compatible with respect for those present.<sup>94</sup> Parents should observe their natural abilities, dispositions, and inclinations, and work with these, instead of against them. When children do not feel like doing or learning anything, that is the right time “to teach the Mind to get the Mastery over it self”.<sup>95</sup> Children should be taught primarily by example, not by rules “which they often do not understand, and constantly as soon forget as given”: “But pray remember, Children are *not* to be *taught by Rules*, which will be always slipping out of their Memories.” It is far better to make them repeat actions until they perform them correctly, so that they acquire the right habits.<sup>96</sup> Children should be treated as rational creatures, and they ‘love to be treated’ as such ‘sooner than is imagined’.<sup>97</sup> The reasoning done with children should be on a level appropriate to their age. With young children, it is mostly a matter of showing them “by the Mildness of your Carriage, and the Composure even in your Correction of them, that what you do is reasonable in you, and useful and necessary for them: And that it is not out of *Caprichio*, Passion, or Fancy, that you command or forbid them any Thing.”<sup>98</sup> Locke’s work on education obviously aims at the education of *parents*, as much as that of their children.

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(Locke).” (Note to § 110, p. 213 of Locke [1968].) It also seems, though, that Locke had more faith in ‘esteem’ than ‘conscience’.

<sup>92</sup> Cf. Greene (1991b), “Whichcote, the Candle of the Lord, and Synderesis”, 642-643. Kittsteiner (1995), 241, writes: “[B]ei Locke leuchtet ‘the candle of the Lord’ nicht etwa zu schwach, so daß sie verstärkt werden könnte – dieses innere Licht war nur eine Illusion.” That is true in the sense that Locke did not believe in an innate knowledge of or drive towards the good; it does ignore Locke’s own use of this mystic symbolism.

<sup>93</sup> Locke (1979), 552 (Book IV, ch. III, § 20). As to the popularity of the metaphor of ‘light’, see Ryle (1970), 152-153: “The metaphor of ‘light’ seemed peculiarly appropriate, since Galilean science dealt so largely with the optically discovered world. ‘Consciousness’ was imported to play in the mental world the part played by light in the mechanical world.” Ryle started out by saying that the concept of consciousness derived from that of conscience; its metaphorical representation derived from the metaphor of the “God-given ‘light’ of private conscience”.

<sup>94</sup> Locke (1968), 156 (§ 63).

<sup>95</sup> *Ibid.*, 174 (§ 75).

<sup>96</sup> *Ibid.*, 157 (§ 64), 158 (§ 66); for the importance of example, see also 182 (§ 82).

<sup>97</sup> *Ibid.*, 181 (§ 81).

<sup>98</sup> *Idem.*

Self-command is not just something to be taught to children; it is the sign of a good parent, and it is primarily through exercising it oneself that a parent teaches his child the same.

As to the more exclusively moral part of the education of children: Locke makes some remarks on the cruelty of children, in particular towards ‘Birds, Butterflies, and such other poor Animals’. He notes – and for Kant this would be the only reason not to be cruel to animals – that

“the Custom of Tormenting and Killing of Beasts, will, by Degrees, harden their Minds even towards Men; and they who delight in the Suffering and Destruction of inferiour Creatures, will not be apt to be very compassionate, or benign to those of their own kind.”<sup>99</sup>

Hence, children should be “bred up in an Abhorrence of *kill*ing, or tormenting any living Creature; and be taught not to *spoil* or destroy any thing, unless it be for the Preservation or Advantage of some other, that is Nobler” – of which the latter is a somewhat utilitarian principle.<sup>100</sup> The ‘Sentiments of Humanity’ should be instilled in them (to be benign, compassionate, et cetera); among other ways by teaching them to be civil ‘towards their Inferiours and the meaner sort of People, particularly Servants’.<sup>101</sup> When the foundations of virtue are laid, they should learn always to be truthful, good-natured, and just. The latter entails a restraint of self-love, injustice generally resulting from its excess.<sup>102</sup> A child should learn The Lord’s Prayer, the Creed, and the Ten Commandments by heart.<sup>103</sup> Simply reading the Bible generally does more harm than good, because much of it cannot be understood just like that. Locke says he is “apt to think, that this in some Men has been the very Reason, why they never had clear and distinct Thoughts of it all their Life time”.<sup>104</sup> The Golden Rule and some other moral rules from the Bible are suitable for children.<sup>105</sup> Locke advises to make use of a catechism, and to use moral rules for memory training.<sup>106</sup> Since the knowledge of virtue is gained mostly through practice and the love of reputation, Locke doubts whether any other ‘moral discourses’ need to be read, apart from what the Bible offers, at least until the child has reached the age at which he can read ‘*Tully’s Offices*’. For when that has been read, Locke

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<sup>99</sup> Ibid., 225-226 (§ 116).

<sup>100</sup> Idem.

<sup>101</sup> Ibid., 227 (§ 117).

<sup>102</sup> Ibid., 244 (§ 139).

<sup>103</sup> Ibid., 260 (§ 157).

<sup>104</sup> Ibid., 261 (§ 158).

<sup>105</sup> Ibid., 261 (§ 159).

<sup>106</sup> Ibid., 262 (§ 159).



advises to read works by Pufendorf and Grotius, so that they will get to know the law and the organisation of society.<sup>107</sup>

Approaching the end of *Some Thoughts Concerning Education*, Locke once more warns against rhetoric and the use of artificial terms, which distract from the truth. Truth is to be found through ‘a mature and due Consideration of Things’.<sup>108</sup> He summarizes what moral education amounts to as follows:

“Teach him to get a Mastery over his Inclinations, and *submit his Appetite to Reason*. This being obtained, and by constant practice settled into Habit , the hardest part of the Task is over. To bring a young Man to this, I know nothing which so much contributes as the love of Praise and Commendation, which should therefore be instilled into him by all Arts imaginable. Make his Mind as sensible of Credit and shame as may be: And when you have done that, you have put a Principle into him, which will influence his Actions, when you are not by, to which the fear of a little smart of a Rod is not comparable, and which will be the proper Stock, whereon afterwards to graft the true Principles of Morality and Religion.”<sup>109</sup>

#### 4.4. INFLUENCE

Hobbes’ and Locke’s influence can hardly be underestimated; that is true for ‘conscience’, just as much as for more standard themes in moral and political philosophy. Hobbes and Locke launched the first full-scale attack on conscience. Their attitude was characterized by distrust. In their view, religious enthusiasts had used the term so liberally, had *abused* the term so much, that it had become a term to be avoided, unless used to signify nothing more than it really signified: people’s own private opinions or judgements (in moral matters, and concerning themselves). Their attack on conscience is at the same time an attack on the abuse of language. They unmasked what people called conscience and looked into the eyes of subjective opinion. But they were after objective truth, and this could only be found by the correct, non-idiosyncratic use of language. They were no less after complete certainty than the people they criticized, but they wished to replace *subjective* by *objective* certainty.<sup>110</sup> They strove for the fixation of

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<sup>107</sup> Ibid., 294 (§ 185-186).

<sup>108</sup> Ibid., 296-297 (§ 188-189).

<sup>109</sup> Ibid., 313-314 (§ 200).

<sup>110</sup> See Locke (1979), 706 (Book IV, ch. XIX, § 16): “But it is not the strength of our private perswasion within our selves, that can warrant [an apprehended Truth] to be a Light or Motion from Heaven: Nothing can do that but the written Word of GOD without us, or that Standard of Reason which is common to us with all Men.” It should be noted that Locke’s remarks on reading the (whole) Bible, which he advises

meaning in their own way. In Hobbes' wake, Locke envisaged a science of morality, as the core business of mankind – a project that would be picked up by later thinkers, and broadened to a science of man. The doctrinalization of which the excessive use of (thereby) worn-out symbolizations was the symptom, was met by Hobbes and Locke with hostility to metaphor and an equally indicative understanding of 'conscience'. They could not accept the symbolic nature of the term, because there were too many worn-out symbols around. They could only see symbolism as a perversion of meaning. This was not just a deficiency on their part. Others shared their worries about the abuse of language, which in this form and on this scale, connected with 'opinions', was a relatively new phenomenon, connected with the spread of the pamphlet as a means of communication. Fifty years after Locke, non-conformist minister John Reynolds writes:

“[T]he Men of this last Age and Generation (...) have been tempted to suspect that Devotion, Religion and Conscience are but empty Names; Cloaks for Ambition and rising Designs.”<sup>111</sup>

Though they were not completely consistent in their rejection of the term 'conscience', they virtually discarded it – in Locke's case in his later writings. It is remarkable that in Locke's work on education the word 'conscience' does not occur even once. This is one of the most striking differences with Kant's *Über Pädagogik*, in which the concept of conscience has a prominent place. Kittsteiner speaks of 'die Entwertung des religiösen Gewissens' in the seventeenth century, and of 'der Wiederaufstieg des moralischen Gewissens' in the eighteenth.<sup>112</sup> The difference between Locke and Kant illustrates this characterization perfectly. Schneewind remarks that Locke's failures were sometimes as significant as his successes.<sup>113</sup> Among those failures is his failure to provide a clear and systematic exposition of his ethics. Schneewind explains how this failure “drew attention to the moral consequences of empiricism in a way that previous empiricist ethics had not

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against in the case of children (who are better served by learning the Lord's Prayer, the Creed, the Ten Commandments and a Catechism by heart) stimulate a non-critical reading of the Bible and an orthodox bent of mind. Children under a certain age cannot be expected to read the Bible critically, of course, but what Locke in fact suggests is that certain truths are preselected for them, that these are almost literally stamped on their minds, and that they do not start reading the whole Bible for themselves until they have come of age – which makes it doubtful whether they will then still be able to read critically, and to question the truths that were instilled in them.

<sup>111</sup> *The Pleasure and Benefit of being Religious* (1740), 51.

<sup>112</sup> Kittsteiner (1995), 229, 254.

<sup>113</sup> Schneewind (1995), 199.

done”.<sup>114</sup> In Locke’s work, ethics is overshadowed by epistemology. He “was more interested in the epistemology of natural law than in working out a code”.<sup>115</sup> As all our ideas come from experience, and experience only “shows us how things are and teaches us what we enjoy”, and therefore “yields no inherently normative ideas”, the empiricist epistemology allows no other source of normativity than God’s will. Locke’s epistemology necessitates a voluntaristic approach to God and morality. “God’s will then can only be understood as arbitrary.”<sup>116</sup> Schneewind then points out the “striking fact that after Locke no major thinker tried to work out a Grotian theory of natural law in voluntarist terms. (...) [T]he post-Lockean philosophers all turned to new ways of attempting to understand morality.”<sup>117</sup> This includes new ways of understanding conscience.

But Locke’s influence (nor that of Hobbes) was not just negative. Hobbes and Locke stood in the Grotian natural law tradition – even if in another sense they constituted their own tradition, based on a more one-sidedly pessimistic anthropology. In this tradition, “natural law provides the solution to the problem of how rational beings, constituted as we are, can live together”.<sup>118</sup> Both Hobbes and Locke continued this line of thinking, making morality a social matter, both in origin and application. Morality is increasingly (and more and more exclusively) about social relations, justice, behaviour in society. Locke, especially, drew attention to the social origins of morality.<sup>119</sup> His refutation of the notion of innate ideas (including innate practical principles) depended for a large part on what he recognized as the influence of upbringing on people’s moral ideas (and vocabulary). The people he criticized for their abuse of words (like ‘conscience’) were evidence of the pervertive potential of education. It is just *those* people, whose

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<sup>114</sup> Ibid., 220.

<sup>115</sup> Ibid., 221.

<sup>116</sup> Idem. There is an important difference with Hobbes here: Hobbes in effect applied a voluntaristic concept of God to the *Sovereign*. Before the civil state, therefore, there is no right or wrong, justice or injustice. Locke does not accept the complete amorality of the state of nature; there are moral limits to the power one man can exert over another even there. There are ‘criminals’ in the state of nature, and these cannot be punished as one fancies, but only “so far as calm reason and conscience dictates, what is proportionate to his Transgression” (Locke [1999], 272 [*The Second Treatise*, § 8]). Locke also makes room for conscience in the judgement of whether a monarch should be overthrown or not. (See part II). Thus, he seems to allow for some natural ability of man to recognize good and evil after all. For him, good and evil, right and wrong, depend on God’s will, as revealed by Reason and Revelation.

<sup>117</sup> Ibid., 222.

<sup>118</sup> Ibid., 209.

<sup>119</sup> I am speaking of morality in the sense of people’s *actual* morality here, not of Locke’s science of morality.

unshakeable views were identified by Locke as the result of faulty education, that provided the clearest evidence for the power of education, and the basis for Locke's belief in the pliability of man. Locke's confidence in the perfective potential of education was not as great as the perversion he saw as the result of it in other people, for he realized – and in Kant this awareness would be even stronger – that perversion might very well come more easily to man than its opposite. But he was confident nonetheless, and this confidence carried over into the next century, magnified by the relative tranquillity and prosperity of the time, and broadened to a confidence in the malleability of society. Sheldon Wolin, discussing Locke, rightly remarks that “the growing distrust of conscience stimulated the search for a new kind of conscience, social rather than individual, one that would be an internalized expression of external rules rather than the externalized expression of internal convictions.”<sup>120</sup>

Hobbes' and Locke's pessimistic view of human nature was rejected by those in the eighteenth century who sought a new anchorage for conscience – among them Locke's pupil, the Earl of Shaftesbury. Others, like Mandeville, elaborated it. The picture of society as developed in the eighteenth century incorporated the idea of competitiveness, each individual striving for his own good. Locke also laid the groundwork for the Humean view of morality as based on approval and disapproval, a view that would strongly influence Smith. With his remarks about the use of a child's love of praise and dislike of shame, Locke drew attention to the importance of emotions for morality. The last quotation I gave from his work on education in effect anticipates a Freudian view of conscience. The internalization of the approval and disapproval of others in the form of feelings of 'credit' and 'shame' constitutes an internal check on immoral action that is more effective than any external sanction. Note that 'shame' is indeed internalized; the distinction between guilt and shame is often simplified, so that guilt is seen as the result of internalization of moral rules, and shame as the result of the confrontation with a disapproving other. In fact, one can be ashamed when there is no one around, for things that no one else would disapprove of. Guilt and shame are often so strongly intertwined that they are hard to distinguish from each other.<sup>121</sup>

Descartes and Spinoza, Kittsteiner notes, treated the concept of conscience 'nicht viel rücksichtsvoller als Hobbes und Locke'.<sup>122</sup> They share the same distrust of the religious conscience, and reduced the concept of conscience to one of its aspects: the 'Gewissensbiß' (literally the 'bite', and more freely translated the 'sting of conscience') and 'Reue' (remorse). Descartes' well-known works are not full of moral philosophy, to say the

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<sup>120</sup> Wolin (2004), 303.

<sup>121</sup> I will look into the distinction in more detail in chapter 8.

<sup>122</sup> Kittsteiner (1995), 244.

least, but there are some remarks about conscience in *Les passions de l'âme* and his correspondence. In a letter to Princess Elisabeth he says that it is difficult to determine “how far reason orders us to interest ourselves in the public; yet that is not something in which one must be very exact: it suffices to satisfy one’s conscience, and in doing that, one can grant very much to one’s inclination.”<sup>123</sup> Clearly, these are not the words of someone who holds conscience in great esteem. Furthermore, in *Les passions de l'âme*, the ‘pangs of conscience’ are explained to arise mechanically, in Mock’s words, from doubts about past or future actions.<sup>124</sup> Both Descartes and Spinoza (1632-1677) see conscience as a form of sadness or mournfulness (*tristitia*).<sup>125</sup> With Descartes, reason replaces conscience as our moral guide. The ‘synderesis’ is replaced by ‘free will’, which, however, suffers from the same problem: it is too weak. But Descartes felt confident that it could be strengthened by reason: “Das Vertrauen auf diese Waffen der Vernunft führt Descartes dazu, eine den Stoikern nahestehende Position einzunehmen: ‘Es gibt keine Seele, die so schwach ist, daß sie nicht, wenn sie richtig geleitet wird, eine absolute Macht über ihre Leidenschaften erlangen kann.’”<sup>126</sup> We see familiar themes in Descartes: the idea of morality based on science, the Stoic fight against the passions, the hope and confidence placed in reason. But while Descartes did not leave much of a concept of conscience, except perhaps in a feeble form of functionalism, and while Hobbes and Locke demoted it (or saw it demoted) to the rank of private opinion, the eighteenth century would revive conscience: “Alle Aussagen aus dem 18. Jahrhundert zeigen seine glorreiche Auferstehung; es bedarf keiner theologischen Strafinstanzen mehr und keiner äußerlichen Ratgeber. Die Kasuistik verschwindet vor diesem innerlich gefühlten Gewissen ebenso sehr wie die meditativen Praktiken zur Bewahrung des Gnadenstandes. Allmählich scheint es aus sich selbst heraus jene verstärkende Kraft zu entfalten, nach der Theologen und Philosophen immer gesucht haben.”<sup>127</sup>

Locke expresses an abhorrence of external authority, of the dictates of either tradition and custom, or other persons. His work on education was meant for parents who ‘dare venture to consult their own Reason’ – an anticipation, it seems, of Kant’s *sapere aude*. But people needed to be taught to think for themselves first. If this was somewhat naively ignored in the first half of the next century, this flaw would be well made up for in the second, in which conscience was once again recognized as standing in need of education.

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<sup>123</sup> Descartes (1978).

<sup>124</sup> Mock (1983), 36.

<sup>125</sup> Stelzenberger (1963b), 108.

<sup>126</sup> Kittsteiner (1995), 246-247; he quotes from René Descartes, *Die Leidenschaften der Seele*, K. Hammacher (ed.), 1984, art. 50, 85 ff.

<sup>127</sup> *Ibid.*, 254.

## 5. Between symbol and doctrine (4): Conscience grounded in Nature and Reason

### 5.1. CONSCIENCE AS A FACULTY

After the devastating seventeenth-century critique of the religious conscience, eighteenth-century philosophers sought, in a more optimistic climate, for a new, less-problematic anchorage for conscience than the God of the Protestants or Catholics could be. They weakened, but did not sever, the conceptual ties between conscience and God. The new anchorage was found in Nature, or Reason, or both. Some British authors gave conscience a new name – impressed, perhaps, by the Hobbesian and Lockean critique of conscience, but in line with their empiricism. For them, conscience became the ‘moral sense’.

#### 5.1.1. The moral sense

The conception of conscience as a faculty was born just as much from Protestant casuistry, with its emphasis on the ‘fact’ that ‘everybody has a conscience’, as from its critique. The Reformation was a movement directed against authority, but it replaced the authority of the Church with that of the Bible, ‘properly’ understood.<sup>1</sup> To make sure that this authority was indeed properly understood, Protestantism developed its own casuistry, and Protestant ministers instructed their flocks in order that their ‘erring consciences’ would be edified.<sup>2</sup> The situation that thus developed, in which Catholics and Protestants alike – as well as different groups within their own ranks – proclaimed the superiority and sanctity of their own conscience, would work on the nerves of people like Thomas Hobbes (1588-1679), as we have seen. Other (often slightly later) thinkers had fewer problems than Hobbes with the notion of conscience in itself, but tried to give it a new footing. Butler is a prime example of that category.

Bishop Joseph Butler, Langston says, is one of a number of Protestant thinkers “who rejected casuistry out of a concern for the development of character”.<sup>3</sup> Butler was not very much concerned with the *development* of character, however; he believed that conscience, if “freed from

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<sup>1</sup> Andrew (1999), 212, draws attention to a particularly vivid metaphor used by Luther to describe the relation between the Bible and the conscience: “Luther asserted that the two Testaments are two testicles and conscience is a woman’s womb.”

<sup>2</sup> Kittsteiner (1995), 196. He points out that we should understand this ‘erring conscience’ not as a conscience that deviates from doctrine, but as “eine prinzipiell andere Auffassung der Religion in der Differenz zwischen ‘normsetzenden Schichten’ und dem Glauben des Volkes.”

<sup>3</sup> Langston (2001), 80.

its lack of power”, would lead men to virtue.<sup>4</sup> Butler developed his views of conscience in the context of discussions concerning human nature: is man intrinsically good or bad? More specifically: is man governed by self-love, or is there also a natural disposition towards benevolence? Hobbes had placed the idea that man is essentially selfish squarely in the foreground of attention – or at least, that is what people took from his work. Butler, however, sided with the Earl of Shaftesbury (Anthony Ashley Cooper, 1671-1713) and Francis Hutcheson (1694-1746) in rejecting Hobbes’ position as one-sided.

Shaftesbury saw egoism as a natural element of human nature; in a moral person, self-concern and altruistic or benevolent impulses are in harmony. Virtue depends on the proper balance between man’s different affections. Everyone is (initially) able to distinguish virtue from vice, by means of the moral sense or conscience, “a faculty which is analogous to that whereby men perceive differences between harmonies and discords, proportion and lack of proportion”.<sup>5</sup> Bernard de Mandeville (1670-1733) criticized Shaftesbury, maintaining that ‘private vices’ often led to ‘public benefits’. Hutcheson went to the other extreme, placing much more emphasis on benevolence, holding that the moral worth of actions only comes from their benevolent quality. Self-love is at best (that is, when it is ‘calm self-love’) morally indifferent. Hutcheson, too, described the moral sense (which, under the influence of Butler, he also called ‘conscience’) as analogous to a sense of beauty. The primary object of the moral sense is the kindness or benevolence in actions, more specifically, “the inward affections and dispositions which by reasoning we infer from the actions observed”.<sup>6</sup> Hutcheson distinguishes between antecedent and subsequent conscience: “Antecedent conscience is the faculty of moral decision or judgment and prefers that which appears most conducive to the virtue and happiness of mankind. Subsequent conscience has as its object past actions in relation to the motives or affections from which they sprang.”<sup>7</sup> There is a strong utilitarian element in the idea of the antecedent conscience; indeed, Hutcheson held “that in equal degrees of happiness, expected to proceed from the action, the virtue is in proportion to the number of persons to whom the happiness shall extend ... so that that action is best which procures the greatest happiness for the greatest numbers, and that worst which in like manner occasions misery.”<sup>8</sup> The influence on Hume of both the idea of the

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<sup>4</sup> Ibid., 82.

<sup>5</sup> Copleston (1964), 186. For Shaftesbury, Hutcheson, Mandeville, and Butler, see 182-202.

<sup>6</sup> Ibid., 191; quoted from Hutcheson, *System of Moral Philosophy*, 1, 1, 5.

<sup>7</sup> Ibid., 194.

<sup>8</sup> Ibid., 193; quoted from Hutcheson, *An Inquiry into the Original of our Ideas of Beauty and Virtue* (1725), II, 3.

antecedent conscience and that of the subsequent conscience is evident – but that is for 2.4.

Shaftesbury and Hutcheson, then, sought a new, not so obviously religious, anchorage for conscience. They found it in nature, but this must be understood as *Nature*, with a capital ‘N’. Proper Enlightenment thinkers, they were anti-authoritarian. While John Locke (1632-1704) had still implied that good and evil depend on the will of the divine law-maker, his pupil Shaftesbury, as well as Hutcheson, saw the foundation of morality in the harmonious order of nature.<sup>9</sup> They did not attempt to prove, but simply stated or assumed as unproblematic that everyone has a moral sense that enables him to distinguish right from wrong, virtue from vice.<sup>10</sup> In this respect, they were in agreement with the Protestant casuists discussed above. This moral sense or conscience is obviously a much broader notion than most notions of conscience we have encountered so far. It does not apply exclusively to the ‘owner’ of the moral sense, but distinguishes between virtue and vice in general. Butler, and after him Adam Smith, would restrict its field of application to the individual again.<sup>11</sup> For the present purpose, what is most important about Shaftesbury’s and Hutcheson’s moral theory is that they posited a moral sense as a universally present, fixed element of human nature – whose operation, admittedly, may be hindered by the influence of false ideas.<sup>12</sup> They combined the doctrine of the universality of the presence of conscience with an optimistic faith in the universality of its dictates.

### 5.1.2. Joseph Butler

Joseph Butler (1692-1752) had much in common with Shaftesbury and Hutcheson, but he thought much more systematically about the place of conscience (not, for him, the ‘moral sense’) in human nature. Again, the treatment of conscience is related to a discussion concerning self-love. For Butler, self-love (‘reasonable self-love’, or ‘moderate self-love’, at least) was

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<sup>9</sup> See part II for Locke’s cynical remarks about the authority of conscience.

<sup>10</sup> It is worth noting that in this same period, there were those who claimed that there was a special religious or spiritual sense, and that this idea, as that of the moral sense, fits in with the empiricist climate of the time (in England). See Campbell (1991), 64: “The Cambridge Platonist John Smith (1618-1652) began his ‘Discourse concerning the True Way or Method of Attaining Divine Knowledge’ with the proposition, ‘That divine things are understood rather by a spiritual sensation than by verbal description, or mere speculation.’”; quoted by Campbell from Gerald R. Cragg, *The Cambridge Platonists, A Library of Protestant Thought*, Oxford University Press, New York, 1968, 76.

<sup>11</sup> Though in Smith’s case the term ‘moral sense’ is inappropriate; Smith himself rejects it. On the other hand, he is much closer to ‘moral sense’ theorists than he would have liked.

<sup>12</sup> The ‘moral sense’ is closer to ‘synderesis’ than ‘conscientia’, obviously.



the natural desire people have for their own happiness. As a general desire, it could not conflict with benevolence, which was but a particular affection. Happiness (or 'satisfaction'), the object of self-love, "consists only in the enjoyment of those objects which are by nature suited to our several particular appetites, passions and affections".<sup>13</sup> But what does he mean by 'nature'?<sup>14</sup> Butler discusses this explicitly, and rejects what we might call morally neutral senses of the term. Copleston explains that according to Butler, "the 'principles' (...) of man form a hierarchy, in which one principle is superior and possesses authority":

"There is a superior principle of reflection or conscience in every man, which distinguishes between the internal principles of his heart, as well as his external actions: which passes judgment upon himself and them; pronounces determinately some actions to be in themselves just, right, good; others to be in themselves evil, wrong, unjust..."<sup>15</sup>

Copleston summarizes: "In so far as conscience rules, therefore, a man acts according to his nature, while in so far as some principle other than conscience dictates his actions, these actions can be called disproportionate to his nature. And to act in accordance with nature is to attain happiness."<sup>16</sup>

Just as there was no hair upon Butler's head (or in his wig) that doubted the existence of God, Butler entertained no doubts concerning the existence of conscience as a natural endowment of man. In this respect he did not differ from Shaftesbury and Hutcheson – or, for that matter, from virtually any reasonable man in his time. He did differ from them in having a more pessimistic view of the world, which, as Willey points out, need not surprise us, given that Butler was "the champion of orthodoxy" in his time.<sup>17</sup> Despite what may appear to us as defects in the constitution of the world, there was proof enough for Butler that, as Willey says, "God is governing the world righteously". The strongest evidence that this is the case "is to be found in our own conscience: we know (...) that 'upon the whole', virtue produces happiness and vice misery".<sup>18</sup>

Yet, it is important to see that, even though following conscience and obtaining happiness generally coincide, to pursue one's own happiness and to follow one's conscience are not the same thing. Nor does our conscience tell us to do something because it is conducive to our happiness.

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<sup>13</sup> Copleston (1964), 196; he quotes from Joseph Butler, *Fifteen Sermons Preached at the Rolls Chapel*, (Gladstone's edition, 1896), 11, 6; (Gladstone vol.) II, p. 196.

<sup>14</sup> For Butler on this question, see also Willey (1968), 85-87.

<sup>15</sup> Copleston (1964), 198; quoted from Butler, *Sermons*, 11, 10; II, p. 79.

<sup>16</sup> Idem. Hence, Copleston notes, it is sometimes difficult to distinguish between conscience and self-love in Butler's thought.

<sup>17</sup> Willey (1968), 77.

<sup>18</sup> Ibid., 79.

To follow conscience, first of all, is to act in accordance with human nature. Secondly, conscience tells us which action is in conformity with our nature.<sup>19</sup> “The goodness or badness of actions arises simply ‘from their being what they are; namely, what becomes such creatures as we are, what the state of the case requires, or the contrary’.”<sup>20</sup> Butler believed that reasonable people were generally very well able to discern what the proper course of action was in various circumstances:

“[L]et any plain honest man, before he engages in any course of action, ask himself, Is this I am going about right, or is it wrong? Is it good, or is it evil? I do not in the least doubt, but that this question would be answered agreeably to truth and virtue, by almost any fair man in almost any circumstance.”<sup>21</sup>

“[I]n general there is in reality a universally acknowledged standard of it (of virtue). It is that which all ages and all countries have made profession of in public; it is that which every man you meet puts on the show of: it is that which the primary and fundamental laws of all civil constitutions over the face of the earth make it their business and endeavour to enforce the practice of upon mankind: namely, justice, veracity, and regard to common good.”<sup>22</sup>

Conscience is ‘naturally’ superior over the other constituents of human nature. It is possible to act against a certain passion without contradicting nature; it is *not* possible to act against self-love without doing so. Hence the natural superiority of the principle of self-love. That conscience (or ‘reflection’) is ‘naturally’ the most superior principle of all is for Butler, in Willey’s words, ‘still more emphatically’ clear.<sup>23</sup> It may not always be superior in power – in fact, it often is not – but it is certainly superior in *authority*.

“Had it strength, as it has right; had it power, as it had manifest authority, it would absolutely govern the world.”<sup>24</sup>

“It is by the possession of that ‘magisterial faculty’, conscience, which is ‘natural’ to man, that he becomes a moral agent, and a law to himself.”<sup>25</sup> We

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<sup>19</sup> *Ibid.*, 85.

<sup>20</sup> Copleston (1964), 200; quoted from the preface to the *Sermons*, 33; p. 25.

<sup>21</sup> *Idem*; quoted from Butler’s *Sermons*, 3, 4; II, p. 70. Cf. Willey (1968), 96.

<sup>22</sup> *Ibid.*, 201; quoted from Joseph Butler, *Dissertation of the Nature of Virtue*, 3; I, pp. 399-400.

<sup>23</sup> Willey (1968), 90.

<sup>24</sup> *Idem*; he quotes from Joseph Butler, *Three Sermons on Human Nature*, 3rd ed., 1855, 70.

are to obey conscience, simply because “[y]our obligation to obey this law is its being the law of your nature”. Hence, Willey writes that “[t]he imperative of conscience is ‘categorical’”.<sup>26</sup> “Conscience does not only offer itself to show us the way we should walk in, but it likewise carries its own authority with it...”<sup>27</sup>

There is a strongly anti-utilitarian element in Butler’s thought, then. He takes issue with authors who imagine “the whole of virtue to consist in singly aiming, according to the best of their judgment, at promoting the happiness of mankind in the present state”; he seems to allude to Shaftesbury and Hutcheson here.<sup>28</sup> For Butler, conscience is concerned with right conduct, *regardless* of the consequences of that conduct. We are simply unable, given the complexity of the world, to succeed in making the right moral calculus each time we are to decide upon what to do. It would be dangerous to try it; the only safe way to decide is to rely upon one’s conscience and one’s sense of duty.<sup>29</sup> Self-love and virtue may generally lead to the same thing (happiness), but this is not guaranteed in this life; exceptions to the general rule “all shall be set right at the final distribution of things”.<sup>30</sup> But however this may be, the only moral motive for virtuous action is that it is right and good; the proper reason to do what is right is that our conscience tells us to. “Moral action springs only from according to conscience the ‘absolute authority which is due to it’.”<sup>31</sup>

Butler, to sum up, emphasizes the element of authority – his restriction (in line with the greater part of the history of thought on the subject, but against Shaftesbury and Hutcheson) of the judgement of conscience to its ‘owner’, and his insistence on deontological rather than utilitarian considerations, are both related to that (either as support, or consequence, or both). He shared with Enlightenment thinkers an emphasis on the autonomy of conscience, it being a ‘law unto itself’. David White remarks: “Butler does sometimes refer to the conscience as the voice of God, but contrary to what is sometimes alleged, he never relies on divine authority in asserting the supremacy, the universality or the reliability of conscience. Butler clearly believes in the autonomy of the conscience as a secular organ of knowledge.”<sup>32</sup> His thought also constitutes a further step in the process of ‘doctrinalization’, in the sense that the existence of conscience as an in fact rather mysterious entity is simply posited and seen as beyond

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<sup>25</sup> *Idem*.

<sup>26</sup> *Ibid.*, 91; he quotes from Butler, *Three Sermons*, 78.

<sup>27</sup> Copleston (1964), 201; citation from Butler, *Sermons*, 3, 6; II, p. 71.

<sup>28</sup> Willey (1968), 92; quoted from Butler, *Three Sermons*, 99.

<sup>29</sup> *Ibid.*, 93.

<sup>30</sup> *Ibid.*, 91.

<sup>31</sup> *Ibid.*, 87.

<sup>32</sup> White, “Joseph Butler (1692-1752)”.

question, and because it is equally assumed that concerning the contents of conscience reasonable men will be in virtual agreement. Here is something else that Butler had in common with Enlightenment thought: universalism with regard to human nature, and universalism with regard to morality. We will see the same in the next subsection, which deals with the thought of Adam Smith, and in the subsection after that, concerning Kant – Kant, however, made the most impressive effort to provide his universalism with a foundation. Butler transformed the moral sense theory significantly, placing far greater emphasis on reason and reflection. The latter is sometimes identified with conscience; but then it must be an ambiguous notion, for Butler also famously spoke of a:

“moral faculty, whether called conscience, moral reason, moral sense, or divine reason, whether considered as a sentiment of the understanding or as a perception of the heart, or, which seems the truth, as including both.”<sup>33</sup>

Finally, in view of the following sections, it is worth to consider Copleston’s observation that “we find in both Shaftesbury and Hutcheson, with their emphasis on virtue and character, a point of departure for an ethics based on the idea of the self-perfection of man or on the harmonious and complete development of human nature rather than on the principles of hedonistic utilitarianism. And in so far as Butler adumbrated the idea of a hierarchy of principles in man under the dominating influence of conscience, he helped to develop this idea.”<sup>34</sup>

## 5.2. CONSCIENCE AS AN AGENT OF THE PERFECTION OF MAN AND SOCIETY

### 5.2.1. Adam Smith

After Hume probably the most famous Scottish philosopher, Adam Smith (1723-1790) derives his fame mostly from his *Inquiry into the Nature and Causes of the Wealth of Nations*. He wrote another major work, however, namely *The Theory of Moral Sentiments*; and it is this work that is of interest to me here. Its first line clearly reveals to what discussion he wishes to contribute:

“How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and

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<sup>33</sup> Copleston (1964), 211; 198.

<sup>34</sup> *Ibid.*, 212.

render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it.”<sup>35</sup>

The book shows the influence, firstly, of Stoic philosophy, and secondly, of his forerunner Hutcheson, and his contemporary and friend David Hume.<sup>36</sup> In their introduction to *The Theory of Moral Sentiments*, Raphael and Macfie point out that “[b]oth Hutcheson and Hume gave prominence, in their ethical theories, to the approval of ‘a spectator’ or of ‘every spectator’, even of ‘a judicious spectator’” and that “[t]he originality of Adam Smith’s impartial spectator lies in his development of the idea so as to explain the source and nature of conscience, i.e. of a man’s capacity to judge his own actions and especially of his sense of duty.”<sup>37</sup>

This original contribution was directly related to the problem of the authority of conscience. Hence, the only chapter in *The Theory of Moral Sentiments* which has ‘conscience’ in its title is called “Of the Influence and Authority of Conscience”. In a letter to William Strahan, whom he asks to read the revised manuscript of *The Theory of Moral Sentiments*, Smith writes:

“I know how much I shall be benefitted and I shall at the same time preserve the pretious right of private judgement for the sake of which our forefathers kicked out the Pope and the Pretender. I believe you to be much more infallible than the Pope, but as I am a Protestant my conscience makes me scruple to submit to any unscriptural authority.”<sup>38</sup>

‘Any unscriptural authority’ means: ‘any unscriptural authority but my own reason and conscience’. It is a matter of conscience not to ‘submit to’ any external authority apart from the Bible. So Smith’s attempt to give conscience an authority of its own flowed from his Protestantism as much as his being an Enlightenment philosopher. It is important not to ‘give all the credit’ (or blame, of course) to the Enlightenment; not to forget, that is, that a puritan like Milton wrote:

“A man may be a heretic in the truth; and if he believe things only because his pastor says so, or the Assembly so determines, without knowing other reason, though his belief be true, yet the very truth he holds becomes his heresy.

There is not any burden that some would not gladlier post off to another than the charge and care of their religion.”<sup>39</sup>

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<sup>35</sup> Smith (1982b), 1. There are several other explicit references to Hobbes; see *ibid.*, 315-319, and cf. Smith (1982a), introduction, paragraph 2.

<sup>36</sup> Shaftesbury is twice mentioned; the influence of Butler is indirect.

<sup>37</sup> Smith (1982b), Introduction, 15.

<sup>38</sup> Smith (1987), Letter 50.

<sup>39</sup> Milton (1918), §§ 61-62.

Now, Smith endeavours to explain the authority of conscience, to give it a foundation. In a couple of places, he contrasts his own position with that of Hutcheson and, possibly, Henry Home (Lord Kames), both of whom had put forward a ‘moral sense’ theory. Recall the quotation from the latter in chapter 1:

“[C]onscience, or the moral sense, is none of our principles of action, but their guide and director. (...) [T]he authority of conscience does not consist merely in an act of reflection. It arises from a direct perception, which we have upon presenting the object, without the intervention of any sort of reflection. And the authority lies in this circumstance, that we perceive the action to be our duty (...). It is in this manner that the moral sense, with regard to some actions, plainly bears upon it the marks of authority over all our appetites and passions. It is the voice of God within us which commands our strictest obedience, just as much as when his will is declared by express revelation.”<sup>40</sup>

In views like this and those of Hutcheson, we see the advent of a particular form of ethical intuitionism, which invites an obvious critique: where does the authority of this intuition come from? Everybody can say they have a moral sense that simply tells them, immediately, what is wrong and what is right; but what if people ‘sense’ different things, morally? And if people have such an infallible moral sense, how come we do not see its effects more clearly? It is along this line that Smith expresses the following criticism:

“So partial are the views of mankind with regard to the propriety of their own conduct, both at the time of action and after it; and so difficult is it for them to view it in the light in which any indifferent spectator would consider it. But if it was by a peculiar faculty, such as the moral sense is supposed to be, that they judged of their own conduct, if they were endued with a particular power of perception, which distinguished the beauty or deformity of passions and affections; as their own passions would be more immediately exposed to the view of this faculty, it would judge with more accuracy concerning them, than concerning those of other men, of which it had only a more distant prospect.”<sup>41</sup>

And in his discussion of ‘systems of moral philosophy’, he vents his most elaborate criticism of Hutcheson’s position. Smith sees no need to suppose

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<sup>40</sup> Home (1976), Essay II, Chapter III, 45. It may very well be that Smith’s criticism of ‘moral sense’ theories was also directed at Lord Kames, for he knew his work, which was published a year before the first edition of *The Theory of Moral Sentiments*; moreover, he lectured in Edinburgh under the patronage of Lord Kames.

<sup>41</sup> Smith (1982b), 158 (III.4.5); the editors note that this is a criticism of Hutcheson.

that there is a special sense of right and wrong.<sup>42</sup> He asks how we come to (dis)approve of another's (dis)approbation of a third man's conduct. The answer seems obvious to him: we approve of his (dis)approbation when it coincides with our own, and disapprove when it does not. So in this case, the "coincidence or opposition of sentiments, between the observer and the person observed, constitutes moral approbation or disapprobation". Which leads Smith to the following rhetorical questions:

"And if it does so in this one case, I would ask, why not in every other? Or to what purpose imagine a new power of perception in order to account for those sentiments?"<sup>43</sup>

He then continues with two very important paragraphs, which criticize not only moral sense theories, but also the idea of conscience as a faculty, and testifies to an awareness that 'conscience' is in part a linguistic problem. The paragraphs are therefore highly important for an evaluation of Smith's own theory of conscience, which is why I quote from them extensively:

"Against every account of the principle of approbation, which makes it depend upon a peculiar sentiment, distinct from every other, I would object; that it is strange that this sentiment, which Providence undoubtedly intended to be the governing principle of human nature, should hitherto have been so little taken notice of, as not to have got a name in any language. The word moral sense is of very late formation, and cannot yet be considered as making part of the English tongue. The word approbation has but within these few years been appropriated to denote peculiarly any thing of this kind. (...) The word conscience does not immediately denote any moral faculty by which we approve or disapprove."<sup>44</sup>

The phrase "which Providence (...) human nature" is an (unconscious) reference to Butler. The passage itself, however, is directed against Hutcheson. Smith uses 'sentiment' and 'faculty' interchangeably here. He opposes any moral theory which makes approbation and disapprobation depend on one sentiment, one sense, or one faculty especially set up for that task. He notices how recent such a faculty conception of conscience is: there is not even a name for the faculty yet. That is, the name that was invented, 'moral sense', is rejected as being 'not yet part of the English tongue', and another likely candidate, 'conscience', is also disqualified for the task. Smith simply states that the term 'does not immediately denote any moral faculty by which we approve or disapprove'. 'Moral sense' theorists had tried to give

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<sup>42</sup> Ibid., 321 (VII.iii.3.2 and 4 introduces Hutcheson's theory, in particular the idea of a 'new power of perception he called a moral sense'.

<sup>43</sup> Ibid., 325 (VII.iii.3.14).

<sup>44</sup> Ibid., 326 (VII.iii.3.15).

people's judgements of right and wrong an extra-religious foundation, independent of external authorities; they had come up with the idea of a special 'moral sense', a faculty which enables us to distinguish right from wrong. They were not unaware of the need for instruction of this moral sense. Thomas Reid (1710-1796), for instance, compared conscience to seeds, implanted in the mind by God, which needed to be cultivated in order to make them flourish.<sup>45</sup> Reid compared conscience to our external senses, in that "we are born under a necessity of trusting them"; they are all we have, and they give us all the security we have.<sup>46</sup> Smith rejects this attempt to ground the authority of conscience, both because he judged it too weak, and because it required the postulation of a special faculty. But he appears somewhat ambiguous in this regard:

"Conscience supposes, indeed, the existence of some such faculty, and properly signifies our consciousness of having acted agreeably or contrary to its directions."<sup>47</sup>

Given what follows in the next paragraph, I take this to mean that when people speak of conscience, or in their experience of conscience, they suppose that a moral faculty exists (on the basis of which conscience operates), while *in fact* there is no such thing. Smith might be saying something similar to what Kant says when he speaks about the external judge that we must suppose to operate when our conscience accuses us – that is, he says that this is how people think, though he does not say, like Kant, that they *must* think this way. But another option is that we should not take the singular ('faculty', not 'faculties') too literally, and that Smith refers to the operation of several known faculties, upon which the operation of conscience depends. I will come back to this further on.

"When we approve of any character or action," Smith says, "the sentiments which we feel, are, according to the foregoing system [and here he seems to refer to his own, not Hutcheson's], derived from four sources (...)". These are: sympathy with the motives of the agent, sympathy with the gratitude of the beneficiary of the actions, an observation that the agent's conduct "has been agreeable to the general rules by which those two sympathies generally act", and the perception of the beauty which the actions derive from their utility.

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<sup>45</sup> Hence the old idea of 'synderesis' was incorporated in a (cautious) Enlightenment view of the perfectibility of man, which clearly betrays a Lockean influence. The 'seed' metaphor constitutes a middle position between an idea of conscience as 'given' and the idea that conscience needs to be created. Cf. Porter (1990), 19-20.

<sup>46</sup> See chapter 10.

<sup>47</sup> Smith (1982b), 326 (VII.iii.3.15).



“After deducting, in any one particular case, all that must be acknowledged to proceed from some one or other of these four principles, I should be glad to know what remains, and I shall freely allow this overplus to be ascribed to a moral sense, or to any other peculiar faculty, provided any body will ascertain precisely what this overplus is.”<sup>48</sup>

The implication is clear: we will not find any ‘overplus’. Smith, then, rejects the idea of a special faculty that enables us to distinguish right from wrong and underlies our feelings of approbation and disapprobation. Our conscience depends, not on the existence of one such faculty, but on the operation of several other, well-established and generally recognized, principles. Smith appears to have a very dynamic concept of conscience, then, very different from a faculty view or a moral sense view of conscience.

It would be unwise, however, uncritically to adopt Smith’s own comparison between his view and that of the moral sense theorists. Though his critique does support the idea put forward in this chapter that a progressive ‘solidification’ of conscience occurred in this period – that is, conscience was more and more perceived as something ‘solid’ – Smith himself contributed to this process, in spite of his criticism, and despite the fact that his terminology shows that he was aware of the symbolic nature of the terms he used.

Smith does not believe conscience to be innate, but he does speak of the ‘judge within’, ‘inmate of the breast’, ‘abstract man’, ‘representative of mankind’, and ‘substitute of the Deity’ as something or someone ‘whom nature [Nature *draft* 4] has constituted (...) the supreme judge’ of all our actions.<sup>49</sup> And conscience arises because we have “a regard to the sentiments of the real or supposed spectator of our conduct”, which is a “great discipline which Nature has established for the acquisition of (...) every virtue”.<sup>50</sup> So, even if conscience is not something people are born with, it is natural that they develop it. Ordinarily, then, no man will be without a conscience – even if it functions poorly – and hence Smith’s position is not too different in this respect from the one he criticizes.

The process by which conscience develops is initially a process of the development of self-command. “A very young child has no self-command,” so Smith notes. “While it remains under the custody of such partial protectors [as its nurse or its parents], its anger is the first and, perhaps, its only passion which it is taught to moderate.” At school, the child finds that, to avoid the hatred or contempt of other children, and even for its

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<sup>48</sup> *Idem* (VII.iii.3.16).

<sup>49</sup> *Ibid.*, 130 (from a piece of text from eds. 2-5 and some drafts, inserted by the editors at III.2.31).

<sup>50</sup> *Ibid.*, 145 (III.3.21).

own safety, it has to moderate all its other passions as well, “to the degree which its play-fellows and companions are likely to be pleased with”.

“It thus enters the great school of self-command, it studies to be more and more master of itself, and begins to exercise over its own feelings a discipline which the practice of the longest life is very seldom sufficient to bring to complete perfection.”<sup>51</sup>

The Stoic influence is clear.<sup>52</sup> Increasing self-command is not only a matter of increasing autonomy, in the sense that one is less ruled by uncontrolled passions, but also a matter of freeing oneself from them to some extent in order to gain a certain peace of mind, and a certain independence from external goods that excite the passions. Yet even more important is the social element: self-command is primarily a virtue because it is agreeable to others, and because it corrects one’s passions to such a degree that others can sympathize with them.

More precisely, I should say: “to such a degree that an impartial spectator can sympathize with them”, for although the development of conscience starts from a concern with the opinions and feelings of *real* spectators, this soon turns into a concern for what an *imagined impartial* spectator would feel and think of one’s motives and actions. We internalize this impartial point of view, and hence Smith speaks of ‘the impartial spectator’ as ‘the man within’ (and many other terms). When we look at ourselves through the eyes of the impartial spectator, we see ourselves in the proper perspective; that is, no longer with the partiality to ourselves that we naturally have:

“[W]hat is it that prompt the generous, upon all occasions, and the mean upon many, to sacrifice their own interests to the greater interests of others? It is not the soft power of humanity, it is not that feeble spark of benevolence which Nature has lighted up in the human heart, that is thus capable of counteracting the strongest impulses of self-love. It is a stronger power, a more forcible motive, which exerts itself upon such occasions. It is reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbiter of our conduct. It is he who, whenever we are about to act so as to affect the happiness of others, calls to us, with a voice capable of astounding the most presumptuous of our passions, that we are but one of the multitude, in no respect better than any other in it (...). It is from him only that we learn the real littleness of ourselves (...).”<sup>53</sup>

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<sup>51</sup> Idem (III.3.22).

<sup>52</sup> It is also quite likely that Smith was acquainted with Locke’s work on education, with which his own work shows important similarities. Compare, for instance, what Locke said about ‘Reputation’ with the role of the real spectator in Smith’s theory.

<sup>53</sup> Ibid., 137 (III.3.4).

Having this impartial spectator to judge our motives and conduct also makes us independent from the praise or blame of other, real spectators, whose judgements also tend to be partial:

“In order to defend ourselves from such partial judgments, we soon learn to set up in our own minds a judge between ourselves and those we live with. We conceive ourselves as acting in the presence of a person quite candid and equitable, of one who has no particular relation either to ourselves, or to those whose interests are affected by our conduct, who is neither father, nor brother, nor friend either to them or to us, but is merely a man in general, an impartial spectator who considers our conduct with the same indifference with which we regard that of other people.”<sup>54</sup>

Indeed, after the publication of *The Theory of Moral Sentiments* Adam Smith came to think less of real spectators than he at first did.<sup>55</sup> Whereas the real spectator is concerned with real praise and blame, the imagined impartial spectator judges the praise- or blameworthiness of our motives and conduct. To be praiseworthy is to be the *proper* object of praise; hence, a sense of propriety underlies the moral judgements of the impartial spectator. They also depend on a sense of merit, which is the desert for the intended beneficial effects of an action.

Now, regarding these, in relation to the origin of the general rules of morality, Smith says the following:

“[T]he general rules of morality (...) are ultimately founded upon experience of what, in particular instances, our moral faculties, our natural sense of merit and propriety, approve, or disapprove of.”<sup>56</sup>

The passage is intended to demonstrate that rules are secondary in morality – a point that Smith also elaborates in his critique of casuistry – but in the present context it is of greater importance that he speaks of ‘moral faculties’.<sup>57</sup> We saw earlier that Smith wrote that ‘conscience supposes the existence of some such faculty’; it now seems that there are at least two, upon which the operation of conscience depends. But further on, it becomes clear that Smith uses the term ‘faculty’ here in a different sense from that in which he used it when he spoke of Hutcheson’s ‘moral sense’ as a faculty:

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<sup>54</sup> Ibid., 129 (from a piece of text from eds. 2-5, inserted by the editors at III.2.31). See also 131 (III.2.32).

<sup>55</sup> On this shift, see *ibid.*, Introduction, 16.

<sup>56</sup> Ibid., 159

<sup>57</sup> Smith’s view of the necessity of using general rules and the superiority of perfect sensitivity to the situation is Aristotelian; cf. Nussbaum (1992).

“Upon whatever we suppose that our moral faculties are founded, whether upon a certain modification of reason, upon an original instinct, called a moral sense, or upon some other principle of our nature, it cannot be doubted, that they were given us for the direction of our conduct in this life. They carry along with them the most evident badges of this authority, which denote that they were set up within us to be the supreme arbiters of all our actions (...). Our moral faculties are by no means, as some have pretended, upon a level in this respect with the other faculties and appetites of our nature (...). No other faculty or principle of action judges of any other. (...) But it is the peculiar office of those faculties now under our consideration to judge, to bestow censure or applause upon all the other principles of our nature. They may be considered as a sort of senses of which those principles are the objects. Every sense is supreme over its own objects. (...) The very essence of each of those qualities consists in its being fitted to please the sense to which it is addressed. It belongs to our moral faculties, in the same manner to determine (...) when and how far every other principle of our nature ought either to be indulged or restrained. What is agreeable to our moral faculties, is fit, right, and proper to be done; the contrary wrong, unfit, and improper.”<sup>58</sup>

In this passage, very clearly reminiscent of Butler, Smith speaks of the moral sense as something suggested by others to *underlie* the moral faculties, rather than being a moral faculty itself. It seems that this is where we should insert Smith’s remarks concerning the four sources of approval or disapproval, if we are to understand Smith correctly. The moral faculties (the sense of propriety, the sense of merit, and, perhaps, the sense of duty) depend on those sources, and conscience (‘our consciousness of having acted agreeably or contrary to [the] directions [of the moral faculties]’) in turn depends on the moral faculties. But this, too, seems inconsistent, for Smith sometimes equates conscience and the impartial spectator, of which he tells us that he often needs to be awakened – and only when we view our own conduct (or that of others, for that matter) with the eyes of the impartial spectator do we have a (proper) sense of propriety or merit.<sup>59</sup> Raphael and Macfie note that Smith’s remark that the moral faculties ‘may be considered as a sort of senses’ is inconsistent with his criticism of Hutcheson.<sup>60</sup> And it is at least unclear whether the sense of duty is a moral faculty on a par with the others, for it replaces them (to a certain extent), in people who lack the proper moral sensitivity. The way Smith writes about it, the sense of duty also seems to replace conscience, or the impartial spectator, while at the same time being able to effect the same emotions of guilt and remorse. The sense of duty appears to be a surrogate conscience for the common people.<sup>61</sup> Smith’s

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<sup>58</sup> Smith (1982b), 165 (III.5.5).

<sup>59</sup> Ibid., 134 (III.3.1).

<sup>60</sup> Ibid., 164, note 1.

<sup>61</sup> Ibid., 162-163 (III.5.1).

belief in the perfectibility of man was very limited, but he did believe in discipline and education, which could make almost any man “act upon almost any occasion with tolerable decency”.<sup>62</sup>

Smith’s contribution to reflection on conscience, then, is rather ambiguous. He saw his own view as markedly different from that of Hutcheson, but he is inconsistent in his criticism. He speaks of moral faculties, even though he does not see conscience as a (single) faculty. The way he speaks of conscience suggests a strong *insistent* reality, and it shows that he is aware of the symbolic nature of the terms he uses. The latter is especially clear from the great number of designations of conscience: ‘the man within’, ‘the (representative of the) impartial spectator’, ‘the great judge and arbiter of our conduct’, ‘the inhabitant of the breast’, ‘demigod within the breast’, ‘inmate of the breast’, ‘impartial judge’, ‘tribunal within our breast’, and so on; he also speaks of the ‘natural pangs of an affrighted conscience’ as ‘the daemons, the avenging furies, which, in this life, haunt the guilty’.<sup>63</sup> And we have seen that he also spoke of ‘reason, principle, conscience’, and of the same as a ‘power’ and a ‘forcible motive’. Where he actually defines conscience, he calls it a consciousness of having acted in accordance with or against the directions of the supposedly existing moral faculty. Adam Smith’s view is not far from the fluid concept I propose in chapter 8; conceptually, Smith also seems to view conscience as a mode of consciousness that forces itself upon people on certain occasions. At the same time, however, we can see how he may have contributed to the ‘solidification’ of conscience. He speaks of moral faculties; he speaks so frequently of the ‘impartial spectator’ as a ‘man within’ that to the reader this ‘person’ seems to acquire a life of its own, and to become a real presence, in a sense – in other words, the frequent use of the symbol wears it out, renders it powerless. Finally, conscience as Smith sees it is very inflexible; it is solely concerned with keeping a person’s motives within the bounds of eternal propriety – a propriety that can be determined objectively, once and for all, if we reason well enough. Reflection upon the ‘infinite perfections’ of the ‘Author of nature’, as well as ‘examination of the works of nature’ tell us that the purpose the Deity intended when he created mankind (and ‘all other rational creatures’) was that they should be happy. It is clear to Smith that “by acting according to the dictates of our moral faculties, we necessarily pursue the most effectual means for promoting the happiness of mankind”, which is why we can be said to “co-operate with the Deity, and to advance as far as in our power the plan of Providence”.<sup>64</sup> Smith’s confidence in reason is impressive; his confidence in conscience much less so. Conscience (which is apparently not the same as reason after all) is corruptible, and easily

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<sup>62</sup> *Ibid.*, 163.

<sup>63</sup> For the last metaphor see *ibid.*, 118 (III.2.9).

<sup>64</sup> *Ibid.*, 166 (III.5.7).

silenced; moreover, it is fallible – God is the final Judge. Socrates was vain to think “that he had secret and frequent intimations from some invisible and divine Being”.<sup>65</sup> To illustrate my point concerning Smith’s confidence in his knowledge regarding the propriety of things: in view of the customs of his time, I have no doubt that Smith would have condemned the conscience of a vegetarian as resulting from an excessive, that is: improper, concern for the well-being of animals – a greater concern for their well-being than the ‘impartial spectator’ would be able to sympathize with.

Smith argued against Hutcheson, but he argued with Hutcheson against Hobbes.<sup>66</sup> His criticism of Hutcheson was only partly justified. For Hutcheson, the moral sense was not a self-sufficient sense or instinct; as Copleston points out about Hutcheson’s views as found in his later works, “[t]he affections are Nature’s voice, and Nature’s voice echoes the voice of God. But this voice needs interpretation and right reason, as one of the functions of conscience or the moral faculty, issues commands. It is called by Hutcheson, using a Stoic phrase, το ηγεμονικον [‘to hegemonikon’]. Here the moral sense, become the moral faculty, takes on a rationalistic colouring.”<sup>67</sup> For Shaftesbury and Hutcheson, Nature had a capital ‘N’. Smith uses the term in both ways, sometimes writing ‘Nature’, and sometimes ‘nature’ when he means ‘Nature’. His worldview is not markedly different. He did contribute a view – as it would turn out a highly influential view – concerning the origins and development of conscience, and he had a keen awareness of the linguistic problems inherent in conceptualizing conscience. Some further considerations concerning Smith in his historical context will follow after the next section, which deals with Kant’s concept(s) of conscience.

### 5.2.2. Immanuel Kant

Immanuel Kant (1724-1804) is often called the greatest modern philosopher. His philosophical system departed in many ways from what preceded it. Despite many continuities with earlier thought, this also holds true for his concept of conscience, which was incorporated in Kant’s ethics.<sup>68</sup> I will discuss Kant’s view of conscience under a number of headings: 1) Autonomy; 2) The definition of conscience; 3) The relation to casuistry; 4) The education of conscience.

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<sup>65</sup> About the imperfection of conscience see, for instance, *ibid.*, 247 (VI.iii.25); concerning Socrates see 251 (VI.iii.28).

<sup>66</sup> See *ibid.*, 318 (VII.3.2.), and 9, the first sentence of the book. See also 2.3.2.7.

<sup>67</sup> Copleston (1964), 194.

<sup>68</sup> It is generally the case with modern philosophers that they incorporated conscience in their philosophical systems, so that it was assimilated according to the requirements of the system. Cf. Stoker (1925), 23-24.

### 5.2.2.1. *Autonomy*

“Aufklärung ist der Ausgang des Menschen aus seiner selbstverschuldeten Unmündigkeit.”<sup>69</sup>

Thus begins Kant’s famous essay “Was ist Aufklärung?” He speaks of conscience twice in this essay. In the second paragraph, Kant writes:

“Habe ich ein Buch, daß für mich Verstand hat, einen Seelforscher, der für mich Gewissen hat, einen Arzt der für mich die Diät beurtheilt, u.s.w., so brauche ich mich ja nicht selbst zu bemühen.”<sup>70</sup>

The similarity with the passage from Milton quoted in the previous subsection is striking. The second time conscience is mentioned is in the following passage, near the end of the essay:

“Ein Fürst, der es seiner nicht unwürdig findet, zu sagen : daß er es für Pflicht halte, in Religionsdingen den Menschen nichts vorzuschreiben, sondern ihnen darin volle Freiheit zu lassen, der also selbst den hochmütigen Namen der Toleranz von sich ablehnt : ist selbst aufgeklärt, und verdient von der dankbaren Welt und Nachwelt als derjenige gepriesen zu werden, der zuerst das menschliche Geschlecht der Unmündigkeit, wenigstens von Seiten der Regierung, entschlug, und jedem frei ließ, sich in allem, was Gewissensangelegenheit ist, seiner eigenen Vernunft zu bedienen.”<sup>71</sup>

Kant’s message is clear: it is time that people start to think from themselves, and cease to depend on external authorities. The very position of conscience in the text – once occurring at the beginning, and once at the end – shows the importance of conscience in the general context of ‘Aufklärung’. In the *Religion innerhalb der Grenzen der Bloßen Vernunft* Kant emphasizes that the right way to use the Bible is as a means to teach virtue, that it “für sich allein auf die Annehmung moralischer Maximen schlechterdings keinen einfluß haben kann und soll”, and that people can know what they need to do in order to be worthy of salvation ‘ohne alle Schriftgelehrsamkeit’.<sup>72</sup> Against the casuists, Kant writes:

“Es ist hier nicht die Frage: wie das Gewissen geleitet werden solle (denn das will keinen Leiter: es ist genug eines zu haben); sondern wie dieses

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<sup>69</sup> Kant [1784], 481.

<sup>70</sup> Ibid., 482.

<sup>71</sup> Ibid., 491-492. (Words that in the original are stressed by an increased space between the letters are here printed with underlining.)

<sup>72</sup> Kant (1995a), 162 (III.ii).

selbst zum Leitfaden in den bedenklichsten moralischen Entschlüssen dienen könne.”<sup>73</sup>

In the *Metaphysik der Sitten*, finally, Conscience is described as ‘ein Geschäftes des Menschen mit sich selbst’.<sup>74</sup>

Conscience, then, is nobody’s business except one’s own. No one should do something merely because someone else tells him to. While the Reformation launched the first assault on external authority, the Enlightenment, unsatisfied with the result, launched the second. This was a full-scale assault. There could be no authority, not even the Bible, other than Reason. Man was a creature endowed with Reason – if only he could be taught to use it. This was the other side of the coin: the destruction of heteronomy in the sense of external authorities giving people the law is not the destruction of heteronomy *per se* – that is, it does not create autonomy. As long as people are governed by their emotions and passions, there can be no autonomy. Autonomy means that the will is a law unto itself. This is the ‘oberstes Prinzip der Sittlichkeit’, to choose in accordance with the Categorical Imperative:

“Das Prinzip der Autonomie ist also: nicht anders zu wählen als so, daß die Maximen seiner Wahl in demselben Wollen zugleich als allgemeines Gesetz mit begriffen seien.”<sup>75</sup>

Heteronomy of the will entails that it is the object of the will, not the will itself, that gives the law:

“Wenn der Wille irgend *worin anders*, als in der Tauglichkeit seiner Maximen zu seiner eigenen allgemeinen Gesetzgebung (...) das Gesetz sucht, das ihn bestimmen soll, so kommt jederzeit *Heteronomie* heraus. Der Wille gibt alsdann sich nicht selbst, sondern das Objekt durch sein Verhältnis zum Willen gibt diesem das Gesetz.”<sup>76</sup>

This may be the case, for instance, when the relation between will and object is determined by a ‘Neigung’. Hence, in order to be autonomous, people must control their emotions and conquer their passions:

“Zur inneren Freiheit aber werden zwei Stücke erfordert: seiner selbst in einem gegebenen Fall Meister (*animus sui compos*) und über sich selbst Herr

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<sup>73</sup> Ibid., 222 (IV.ii.4).

<sup>74</sup> Kant (1995b), 528 (‘Ethische Elementarlehre’, I.i.2.1 [§ 13]).

<sup>75</sup> Kant (2002), 95.

<sup>76</sup> Ibid., 96.



zu sein (*imperium in semetipsum*), d. i. seine Affecten zu zähmen und seine Leidenschaften zu beherrschen.”<sup>77</sup>

Kant’s emphasis on self-command resembles the Stoic self-command applauded by Smith, but whereas for the latter self-command was itself a form of propriety, a matter of constraining one’s conduct within the bounds of propriety, ultimately related to what is agreeable, what the impartial spectator could approve of, for Kant self-command is a prerequisite, *the* precondition, for being moral. We should not control our passions because this is what morality requires, but there would be no morality if there were no autonomy, no control of the passions – hence, morality requires self-command in another sense, namely as a precondition of itself. Moreover, moral autonomy is part of the definition of a *person*:

“Person ist dasjenige Subject, dessen Handlungen einer Zurechnung fähig sind. Die moralische Persönlichkeit ist also nichts anders, als die Freiheit eines vernünftigen Wesens unter moralischen Gesetzen (...), woraus dann folgt, daß eine Person keinen anderen Gesetzen als denen, die sie (entweder allein, oder wenigstens zugleich mit anderen) sich selbst giebt, unterworfen ist.”<sup>78</sup>

The rejection of external authority must be understood in the context of the freshness of the religious strife of the sixteenth and seventeenth century; the emphasis on autonomy belongs to the prospective, rather than retrospective, context – if there can be such a thing as a prospective context – of a changing society, a new view of history, and a new idea of man’s place in both. I will come back to this theme under point D.

#### 5.2.2.2. *The definition of conscience*

Kant left us with a large number of definitions and descriptions of conscience. The most comprehensive study of them is Heubult’s *Die Gewissenslehre Kants in ihrer Endform von 1797*.<sup>79</sup> I will not look into all these different formulations. Instead, my main focus will be on the conception that (arguably) fits in best with the better-known aspects of his philosophy; that is, with Kant’s conception of conscience in its ‘Endform’. In the ‘Tugendlehre’ of the *Metaphysik der Sitten*, Kant describes conscience as follows:

“Gewissen ist die dem Menschen in jedem Fall eines Gesetzes seine Pflicht zum Lossprechen oder Verurtheilen vorhaltende praktische Vernunft. Seine

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<sup>77</sup> Kant (1995b), 492 (‘Einleitung zur Tugendlehre’, ‘Anmerkung’ between XIV and XV).

<sup>78</sup> Ibid., 267-268 (‘Einleitung in die Metaphysik der Sitten’, IV).

<sup>79</sup> Heubult (1980).

Beziehung also ist nicht die auf ein Object, sondern bloß aufs Subject (das moralische Gefühl durch ihren Act zu afficiren); also eine unausbleibliche Thatsache, nicht eine Obliegenheit und Pflicht.”<sup>80</sup>

Conscience, then, is contentless. That is, it does not present the subject with knowledge; it does not tell anyone anything he did not already know. It only asks whether he did his duty. As Patton puts it: “It asks whether we honestly believed that our action was not wrong and whether we took the trouble necessary to justify our belief.”<sup>81</sup> Depending on the answer, our conscience either acquits or condemns us. Kant, then, puts forward a formalistic, or functionalistic, concept of conscience.<sup>82</sup> Conscience works on the basis of what a person *considers* to be his duty; it does not itself judge what it is a person’s duty to do, and the judgement may be wrong. Conscience, however, cannot be wrong: ‘ein irrendes Gewissen’ is ‘ein Unding’. A person (in possession of his full mental capacities) cannot be mistaken as to whether he judged something to be his duty or not. The only judgement that conscience can make is that a person either did what he held to be his duty, or did what he believed to be wrong and against his duty.

There is no escaping conscience, either. People naturally have a number of predispositions that make them susceptible to the idea of duty. These are “das moralische Gefühl, das Gewissen, die Liebe des Nächsten und die Achtung für sich selbst”.<sup>83</sup> There can be no duty to have these, because they are preconditions for the susceptibility for the concept of duty. The ‘moral feeling’, which is “die Empfänglichkeit für Lust oder unlust bloß aus dem Bewußtsein der Übereinstimmung oder des Widerstreits unserer Handlung mit dem Pflichtgesetze”, must not be identified with the Scottish ‘moral sense’. Kant is critical of this notion:

“Wir haben aber für das (Sittlich-) Gute und Böse eben so wenig einen besonderen Sinn, als wir einen solchen für die Wahrheit haben, ob man sich gleich oft so ausdrückt, sondern Empfänglichkeit der freien Willkür für die Bewegung derselben durch praktische reine Vernunft (und ihr Gesetz), und das ist es, was wir das moralische Gefühl nennen.”<sup>84</sup>

The next paragraph deals with conscience;

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<sup>80</sup> Kant (1995b), 484 (‘Einleitung zur Tugendlehre’ XIIb).

<sup>81</sup> Patton (1979), 242.

<sup>82</sup> Cf. Kittsteiner (1995), 280: “Kant kritisiert das religiös orientierte Gewissen; anders als die Philosophen des 17. Jahrhunderts verwirft er es deshalb aber nicht als Instanz, sondern er setzt es in seine Funktionen wieder ein.”

<sup>83</sup> Kant (1995b), 482 (‘Einleitung zur Tugendlehre’ XII).

<sup>84</sup> Ibid., 483 (‘Einleitung zur Tugendlehre’ XIIa).

“Eben so ist das Gewissen nicht etwas Erwerbliches, und es giebt keine Pflicht sich eines anzuschaffen; sondern jeder Mensch, als sittliches Wesen, hat ein solches ursprünglich in sich.”<sup>85</sup>

There can be no such thing as a duty to have a conscience, for one would need a conscience to conceive of that duty. The same goes for acting according to conscience:

“Nach Gewissen zu handeln kann also selbst nicht Pflicht sein, weil es sonst noch ein zweites Gewissen geben müßte, um sich des Acts des ersteren bewußt zu werden.”<sup>86</sup>

Hence, there is no such thing as ‘being without a conscience’ (‘Gewissenlosigkeit’); when people use that term, they can only mean that someone does not listen to his conscience. Everybody has a conscience, and it speaks ineluctably. One can pay no attention to it, but one cannot stop hearing it:

“Jeder Mensch hat Gewissen [sic] und findet sich durch einen inneren Richter beobachtet, bedroht, und überhaupt im Respect (mit Furcht verbundener Achtung) gehalten, und diese über die Gesetze in ihm wachende Gewalt ist nicht etwas, was er sich selbst (willkürlich) macht, sondern es ist seinem Wesen einverleibt. Es folgt ihm wie sein Schatten, wenn er zu entfliehen gedenkt. Er kann sich zwar durch Lüste und Zerstreungen betäuben oder in Schlaf bringen, aber nicht vermeiden dann und wann zu sich selbst zu kommen oder zu erwachen, wo er alsbald die furchtbare Stimme desselben vernimmt. er kann es in seiner äußersten Verworfenheit allenfalls dahin bringen, sich daran gar nicht mehr zu kehren, aber sie zu hören, kann er doch nicht vermeiden.”<sup>87</sup>

Nor can conscience be corrupted; if someone thinks that a person’s conscience may judge him too mildly, he is mistaken:

“Denn eben darum, weil sie frei ist und selbst über ihn, den Menschen, sprechen soll, ist sie unbestechlich, und wenn man ihm in einem solchen Zustande nur sagt, daß es wenigstens möglich sei, er werde bald vor einem Richter stehen müssen, so darf man ihn nur seinem eigenen Nachdenken überlassen, welches ihn aller Wahrscheinlichkeit nach mit der größten Strenge richten wird.”<sup>88</sup>

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<sup>85</sup> Ibid., 484 (‘Einleitung zur Tugendlehre’ XIIb).

<sup>86</sup> Ibid., 485 (‘Einleitung zur Tugendlehre’ XIIb).

<sup>87</sup> Ibid., 527-528 (‘Ethische Elementarlehre’, I.i.2.1 [§ 13]).

<sup>88</sup> Kant (1995a), 87-88 (note to II.i.c).

Kant has in common with the Protestant casuists or the moral sense theorists discussed earlier, then, the idea that every man has a conscience. But where Balduin, as Kittsteiner remarked, used many qualifications to express a factually non-existent conscience, Kant rejects such qualifications on the grounds that everyone has a conscience, and this conscience cannot err, because that would be a logical impossibility.<sup>89</sup> His criticism of moral sense theorists points to an important feature of his concept of conscience – a feature that is grossly overlooked by Douglas Langston, when he says that Kant “positioned conscience as the *faculty* that acts as a judge to ensure that moral beings do their duties” and that “under the influence of Butler and Kant, conscience is conceived of as an independent entity (a *faculty*) that is infallible, directive, and punitive, and the guarantor of morality”.<sup>90</sup> This feature is almost the exact opposite of what Langston perceives in Kant’s work: it is a strong awareness of the fact that the term ‘Gewissen’ does *not* correspond with a separate *entity*. There is only one place in Kant’s work (as far as I know) in which he speaks of conscience as a faculty, namely in the *Kritik der praktischen Vernunft*, where he mentions the “Richteraussprüche desjenigen wundersamen Vermögens in uns, welches wir Gewissen nennen”.<sup>91</sup> ‘Vermögen’ could be translated as ‘faculty’. In all other places where conscience is mentioned – most importantly: in all places where conscience is more elaborately discussed – it is not called a ‘faculty’.

That is not to say that the conceptualization is always consistent – in fact, it is hard to view everything Kant says in the *Metaphysik der Sitten* alone as consistent. Patton, for instance, points out the difficulty of reconciling the view of conscience as a predisposition to be affected by notions of duty, and the view that conscience is practical reason in one of its functions, or an intellectual disposition.<sup>92</sup> Furthermore, in 1793 Kant wrote that conscience was “die sich selbst richtende moralische Urtheilskraft”, rather than ‘praktische Vernunft’ in one of its functions, and also: “Das Gewissen ist ein Bewußtsein, das für sich selbst Pflicht ist.”<sup>93</sup> This is quite problematic in view of the 1797 position, that to have or act according to conscience could not itself be a duty, because one would need another conscience to become aware of that duty, and so on, *ad infinitum*. Patton gives a plausible interpretation, namely that we “have a duty to apply what conscience we may

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<sup>89</sup> Kant also remarks that to say that someone has an ‘accommodating conscience’ (‘weites Gewissen’) is to say that he has none, that he is ‘gewissenlos’; Kant (1995b), 530 (‘Ethische Elementarlehre’, I.i.2.1 [§ 13]). But this is impossible, which means that the formula ‘accommodating conscience’ is a contradiction in terms. Alternatively, ‘gewissenlos’ would have to be taken as ‘displaying a tendency to have no regard for conscience at all’; cf. Patton (1979), 242.

<sup>90</sup> Langston (2001), 84.

<sup>91</sup> Kant (1998), 157 (I.i.3).

<sup>92</sup> Patton (1979), 241.

<sup>93</sup> Kant (1995a), 222 (IV.ii.4).

have. This means only that we have a duty to be sincere and impartial in examining the evidence for our own innocence or guilt.”<sup>94</sup> I will return to this definition of conscience under point C.

Kant’s conceptualization of conscience *is* consistent in not turning conscience into an entity. Whether it is a function or mode of the ‘Urtheilskraft’ or the ‘praktische Vernunft’, it has the character of a process that occurs within the subject’s consciousness. That Kant writes: “Jeder Mensch hat Gewissen” instead of “Jeder Mensch hat ein Gewissen”, and that he does so immediately after the association of conscience with a complete internal judicial process, may not be a coincidence. On the other hand, it would be unwise to draw too strong a conclusion from this single occurrence of ‘Gewissen’ without an article, for it is indeed a single occurrence; everywhere else Kant uses either an article or a possessive pronoun. Nevertheless, to speak of ‘Gewissen’ rather than ‘ein Gewissen’ fits in with Kant’s conception of conscience as essentially a process of thought, which people can engage in with more or less vigour, and to which they can attend to a greater or lesser degree.

In this regard it is also important to note Kant’s use of metaphors, especially those relating to the judicial process. He writes:

“Das Bewußtsein eines inneren Gerichtshofes im Menschen ‘vor welchem sich seine Gedanken einander verklagen oder entschuldigen’ ist das **Gewissen**.”<sup>95</sup>

A bit further on, he adds:

“Diese ursprüngliche intellektuelle und (weil sie Pflichtvorstellung ist) moralische Anlage, Gewissen genannt, hat nun das Besondere in sich, daß, obzwar dieses sein geschäfte ein Geschäfte des Menschen mit sich selbst ist, dieser sich doch durch seine Vernunft genöthigt sieht, es als auf den Geheiß einer anderen Person zu treiben. Denn der Handel ist hier die Führung einer Rechtssache (*causa*) vor Gericht. Daß aber der durch sein Gewissen Angeklagte mit dem Richter als eine und dieselbe Person

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<sup>94</sup> Patton (1979), 249. Cf. Kant (1995a), 223 (IV.ii.4): “[H]ier richtet die Vernunft sich selbst, ob sie auch wirklich jene Beurtheilung der Handlungen mit aller Behutsamkeit (ob sie recht oder unrecht sind) übernommen habe...” It is perhaps also possible that the supposed inconsistency can be resolved along the same lines as the general antinomy of having a duty to oneself, the solution of which requires the distinction between ‘homo noumenon’ and ‘homo phaenomenon’; see Kant (1995b), 501-503 (‘Ethische Elementarlehre’, I.i, ‘Einleitung’, § 1-3); the same distinction is used to explain how conscience can be both prosecutor and prosecuted. Cf. also the title of the ‘Ethische Elementarlehre’, I.i.2.1, § 13, which deals with conscience: “Von der Pflicht des Menschen gegen sich selbst, als den angeborenen Richter über sich selbst”.

<sup>95</sup> Kant (1995b), 527 (‘Ethische Elementarlehre’, I.i.2.1 [§ 13]).

vorgestellt werde, ist eine ungereimte Vorstellungsart von einem Gerichtshofe; denn da würde ja der Ankläger jederzeit verlieren. – Also wird sich das Gewissen des Menschen bei allen Pflichten einen Anderen (als den Menschen überhaupt, d. i.) als sich selbst, zum Richter seiner Handlungen denken müssen, wenn es nicht mit sich selbst im Widerspruch stehen soll. Dieser Andere mag nun eine wirkliche, oder bloß idealische Person sein, welche die Vernunft sich selbst schafft.”<sup>96</sup>

Kant uses a metaphor, and he is (of course, I would say in his case) well aware of that. This is not symbolic language in the sense that Kant gives a symbolic expression of experiences of conscience; rather, he uses symbolic language in a primarily indicative way, namely to indicate something which cannot literally be indicated. To make the metaphor work, the reader will have to integrate certain experiences in it; but this remains far from surrender to the symbolism. Kant tries to give us a way of imagining conscience in a manner that renders it consistent with his overarching philosophical system. For to resolve the ‘Ungereimtheit’ of the split self, the person that both judges and is judged by himself, Kant needs to introduce the distinction between man as phenomenon and man as noumenon:

“Ich, der Kläger und doch auch Angeklagter, bin eben derselbe Mensch (*numero idem*), aber als Subject der moralischen (...) Gesetzgebung, wo der Mensch einem Gesetz Unterthan ist, das er sich selbst giebt (*homo noumenon*), ist er ein Anderer als der mit Vernunft begabte Sinnenmensch (*specie diversus*), aber nur in praktischer Rücksicht zu betrachten...”<sup>97</sup>

The former, *homo noumenon*, is the accuser and judge; the latter the accused and judged. The paradox in the metaphor is the result of a problem that is at the core of Kant’s philosophy: how can man be determined and free at the same time? With regard to this view of conscience, a serious problem remains, of course, for how can Kant guarantee the purity of a noumenal self that is imagined by phenomenal self?

The resemblance between Kant’s ‘imagined real or ideal person’ and Adam Smith’s ‘impartial spectator’ is striking. Kant is not consistent in his employment of the ‘inner court’ metaphor; he also speaks of conscience as being the judge (rather than the consciousness of the inner court).<sup>98</sup> Smith’s

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<sup>96</sup> Ibid., 528 (‘Ethische Elementarlehre’, I.i.2.1 [§ 13]).

<sup>97</sup> Idem (note to the ‘Ethische Elementarlehre’, I.i.2.1 [§ 13]). See *ibid.*, 501-503 (‘Ethische Elementarlehre’, I.i, ‘Einleitung’, § 1-3), and cf. Kant (1998), 156-157 (I.i.3).

<sup>98</sup> One could also wonder whether conscience is supposed to be a consciousness *of* an inner court, which would be the object of that consciousness (which would render conscience nothing more than an awareness of things that are happening in the mind, in which it does not participate), or a consciousness that *takes the form of* an

impartial spectator also judges, and sometimes the emphasis lies more on viewing ourselves through the eyes of the spectator, so that the spectator as a ‘man within’ recedes into the background, making way for the idea of a perspective on ourselves, a certain way of regarding ourselves and our conduct. Kant was, indeed, familiar with Smith’s theory.<sup>99</sup> Kittsteiner quotes:

“In Smiths system: warum nimmt der Unpartheyische richter (der nicht einer von den participanten ist) sich dessen, was allgemein gut ist, an? und warum hat er daran irgend ein wohlgefallen?”

and he comments: “Mit diesem Hinweis deckt Kant selbst die Grundlage seiner eigenen These der Differenzierung des Ichs auf; zugleich zeigt seine Anfrage an Smith, was ihm bei diesem Ansatz fehlt: die verbindliche Allgemeinheit des Kategorischen Imperativs.”<sup>100</sup> Kant struggles with the problem of moral motivation, considers Smith’s solution, and rejects it. Smith, Kittsteiner notes, followed in Locke’s footsteps. The acquisition of conscience is a process of socialization; it starts with the interiorization of the other’s perspective. Kant declines this solution, Kittsteiner says, “weil er relativistische Konsequenzen für eine Moral befürchtet”.<sup>101</sup> This may be true, but it is worth noting that it entails a misconception of Smith’s theory, which (especially in the sixth edition) emphatically stresses the difference between the *impartial* and the *real* spectator, Smith’s confidence in the latter of which was also small (and increasingly so).<sup>102</sup> Kant’s own solution to the problem of moral motivation, by the way, shows some signs of desperation (or else it is a consequence of reason reaching its limits): Kant’s answer to the question how conscience can be a consciousness that is a duty to itself is as follows:

“Es ist ein moralischer Grundsatz, der keines Beweises bedarf: man soll nichts auf die Gefahr wagen, daß es unrecht sei.”<sup>103</sup>

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inner court; that is, a way of conceiving of one’s own actions as those of a person on trial. Cf. Kant (1995b), 530 (‘Ethische Elementarlehre’, I.i.2.1 [§ 13]): “Wenn die That beschlossen ist, tritt *im* Gewissen zuerst der Ankläger, aber zugleich mit ihm auch ein Anwalt (Advocat) auf...” (My italics.) This, to me, suggests the latter of the two alternatives.

<sup>99</sup> In view of the striking similarities between Kant’s theory and that of Joseph Butler, it is remarkable that Kant does *not* seem to have been directly familiar with the latter’s work.

<sup>100</sup> Kittsteiner (1995), 281; he quotes from Immanuel Kant, *Reflexionen zur Moralphilosophie*, in *Kants Werke*, Akademie Textausgabe, Berlin 1968, Vol. XIX, 185 (No. 6864).

<sup>101</sup> *Ibid.*, 282.

<sup>102</sup> Besides, Smith’s view of what was ‘proper’ also had a more ‘objective’ foundation in his Stoic conception of a pre-established order in the world, and in society.

<sup>103</sup> Kant (1995a), 222 (IV.ii.4).

To ask why not is to ask one question too many.<sup>104</sup>

Despite this difference between Kant's and Smith's views, they are in many respects similar. The reason why in conscience we must conceive of our accuser and judge as another person is that otherwise 'the accuser would always lose' – in other words: impartiality is what is at stake here. Referring to § 14 and § 15 of the 'Ethische Elementarlehre' in the *Metaphysik der Sitten*, Patton writes: "The first duty of man towards himself is to know himself (...). From this there follows a direct duty to be impartial in judging ourselves before the law and sincere in our admissions of moral worth or worthlessness."<sup>105</sup> The function of Smith's impartial spectator is to make man see himself in the proper perspective, just as (in)significant as everybody else – as in the utilitarian *adagium*: 'all counting for one, and none for more than one'. Another important similarity between the positions of Kant and Smith lies in the relation of conscience to God. Concerning the imagined other in the court of conscience, Kant writes:

"Eine solche idealische Person (der autorisirte Gewissensrichter) muß ein Herzenskündiger sein; denn der Gerichtshof ist im Inneren des Menschen aufgeschlagen – zugleich muß er aber auch allverpflichtend, d. i. eine solche Person sein, oder als eine solche gedacht werden, in Verhältniß auf welche alle Pflichten überhaupt auch als ihre Gebote anzusehen sind: weil das Gewissen über alle freie Handlungen der innere Richter ist. – Da nun ein solches moralisches Wesen zugleich alle Gewalt (im Himmel und auf Erden) haben muß, weil es sonst nicht (...) seinen Gesetzen den ihnen angemessenen Effect verschaffen könnte, ein solches über alles machthabende moralische Wesen aber **Gott** heißt: so wird das Gewissen als subjectives Princip einer vor Gott seiner Thaten wegen zu leistenden Verantwortung gedacht werden müssen: ja es wird der letztere Begriff (wenn gleich nur auf dunkle Art) in jenem moralischen Selbstbewußtsein jederzeit enthalten sein."<sup>106</sup>

For Kant, the concept of conscience inevitably leads to the idea of God as the Almighty, to whom we account for our deeds. Our duties must be thought of as his commands. What was reality for Paul, for Augustine, and

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<sup>104</sup> Cf. Kant (2002), 124-125 (III, 'Von der äußersten Grenze aller praktischen Philosophie'): "[W]ie das bloße *Prinzip der Allgemeingültigkeit aller ihrer Maximen [die der Reinen Vernunft] als Gesetze* (...) ohne alle Materie (Gegenstand) des Willens, woran man zum voraus irgend ein Interesse nehmen dürfe, für sich selbst eine Triebfeder abgeben und ein Interesse, welches rein *moralisch* heißen würde, bewirken, oder mit anderen Worten: *nie reine Vernunft praktisch sein könne*, das zu erklären, dazu ist alle menschliche Vernunft gänzlich unvernünftig, und alle Mühe und Arbeit, hiervon Erklärung zu suchen, ist verloren."

<sup>105</sup> Patton (1979), 247.

<sup>106</sup> Kant (1995b), 529 ('Ethische Elementarlehre', I.i.2.1 [§ 13]).



for Luther – the reality of the ‘coram deo’ – has become something only a few steps away from a thought-experiment in Kant’s philosophy. But as it is, it is still more than that: it does not have the freedom from commitment of a thought-experiment – it is how we *must* think of conscience.<sup>107</sup> However this may be, the main point is that we find similar suggestions in *The Theory of Moral Sentiments*.

“Since these [the moral faculties], therefore, were plainly intended to be the governing principles of human nature, the rules which they prescribe are to be regarded as the commands and laws of the Deity, promulgated by those vicegerents which he has thus set up within us.”<sup>108</sup>

For Smith, too, it is not a case of it *being so*, that the dictates of conscience are in fact those of God – but we must regard them as such.<sup>109</sup> Even if the last clause was also intended to be part of our way of regarding the rules given by the moral faculties, however, the phrase ‘were plainly intended’ shows that for Smith there really is a superhuman reality behind conscience – indeed, behind everything. This is Nature; but as it is hard to think of Nature as commanding us, we must suppose this to be the work of the Deity. While Smith and Kant use the same manoeuvre to enforce the authority of conscience, then, they ground this authority differently. For Kant, the authority of conscience is grounded in Reason; in Smith’s case, it is finally grounded in Nature, and Reason can testify to this.

Another interesting issue is raised by the quotation from Kant above. “Eine solche idealische Person,” Kant says, “muß ein Herzenskündiger sein.” Does he mean to say that conscience judges our *motives* for action? Patton also discusses the matter. He sees as an implication of Kant’s use of judicial metaphors that, as courts are concerned with external actions rather than inner motives, so too the conscience proclaims us guilty when we have broken the moral law, not when we had the wrong motive.<sup>110</sup> But, as Patton points out, Kant argues that the first command of all duties to ourselves is the following:

“Erkenne (erforsche, ergründe) dich selbst nicht nach deiner physischen Vollkommenheit (der Tauglichkeit oder Untauglichkeit zu allerlei dir beliebigen oder auch gebotenen Zwecke), sondern nach der moralischen in

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<sup>107</sup> However, (idem): “Dieses will nun nicht so viel sagen als: der Mensch, durch die Idee, zu welcher ihn sein Gewissen unvermeidlich leitet, sei berechtigt, noch weniger aber: er sei durch dasselbe verbunden ein solches höchste Wesen außer sich als wirklich anzunehmen...”

<sup>108</sup> Smith (1982b), 165.

<sup>109</sup> Both Kant and Smith also introduce the postulate of immortality. See Kant (1998), 194-197 (I.II.2.IV), and Smith, (1982b) 132 and 169 (III.2.33 and III.5.10).

<sup>110</sup> Patton (1979), 242.

Beziehung auf deine Pflicht – dein Herz, – ob es gut oder böse sei, ob die Quelle deiner Handlungen lauter oder unlauter, und was entweder als ursprünglich zur Substanz des Menschen gehörend, oder als abgeleitet (erworben oder zugezogen) ihm selbst zugerechnet werden kann und zum moralischen Zustande gehören mag.”<sup>111</sup>

Now, Patton says that “[i]f we take this, as we reasonably may, to be the work of conscience, conscience would seem to be concerned with our motives as well as with our own judgements about the rightness or wrongness of our actions”.<sup>112</sup> It is unclear whether we can indeed ‘reasonably take this to be the work of conscience’, for Kant never explicitly says that conscience judges motives. Rather, he says things like: “[W]enn es aber zur That kommt oder gekommen ist, so pricht das Gewissen unwillkürlich und unvermeidlich.”<sup>113</sup> Moreover, however this may be, Kant also says that it is

“dem Menschen nicht möglich so in die Tiefe seines eigenen Herzens einzuschauen, daß er jemals von der Reinigkeit seiner moralischen Absicht und der Lauterkeit seiner Gesinnung auch nur in einer Handlung völlig gewiß sein könnte...”<sup>114</sup>

This, by the way, explains why Kant deems it possible that a purely moral act has never occurred.<sup>115</sup> It is implausible, then, that Kant would hold that conscience is concerned with the motives for action.

But what are the implications of this conclusion? How does this relate to Kant’s statement that “[e]s ist überall nichts in der Welt, ja überhaupt auch außer derselben zu denken möglich, was ohne Einschränkung für gut könnte gehalten werden, als allein ein GUTER WILLE”?<sup>116</sup> And how to his insistence that moral worth depends on the motive for action, on the intention?<sup>117</sup> It seems that the conclusion must be

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<sup>111</sup> Kant (1995b), 531 (‘Ethische Elementarlehre’, I.i.2.2 [§ 14]).

<sup>112</sup> Patton (1979), 243.

<sup>113</sup> Kant (1995b), 485 (‘Einleitung zur Tugendlehre’ XIIb).

<sup>114</sup> Ibid., 475 (‘Einleitung zur Tugendlehre’ VIII.1). Cf. *ibid.*, 538 (‘Ethische Elementarlehre’ I.i.2.2): “Die Tiefen des menschlichen Herzens sind unergründlich. Wer kennt sich gnugsam, wenn die Triebfeder zur Pflichtbeobachtung von ihm gefühlt wird, ob sie gänzlich aus der Vorstellung des Gesetzes hervorgehe, oder ob nicht manche andere, sinnliche Antriebe mitwirken...”

<sup>115</sup> See Kant (2002), 49 (II, paragraph 3), Kant (1995a), 93 (note), and Kant (1995b).

<sup>116</sup> Kant (2002), 28 (I, paragraph 1).

<sup>117</sup> See, for instance, Kant (1995a), 176 (III, ‘Allgemeine Anmerkung’): “Das höchste, für Menschen nie völlig erreichbare Ziel der moralischen Vollkommenheit endlicher Geschöpfe ist aber die Liebe des Gesetzes.”; Kant (1995b), 262 (‘Einleitung in die Metaphysik der Sitten’ III): “Man nennt die bloße Übereinstimmung oder Nichtübereinstimmung einer Handlung mit dem Gesetze ohne Rücksicht auf die Triebfeder derselben die Legalität (Gesetzmäßigkeit), diejenige aber, in welcher die

that conscience does not relate to morality *in optima forma*. However important a principle it may be, it cannot say anything about what makes an action *truly* moral, namely that it was done *for the sake of duty alone*. The other way around: had someone reached the pinnacle of morality – something that is factually out of reach for human beings – this person, though he would still have a conscience, would have no need for it anymore. Someone who has the ‘Liebe des Gesetzes’ need not be reminded of his duty. Again, a remarkable similarity with Adam Smith’s views comes in view. For Smith, duty is born from necessity, simply because most people do not have a very refined moral sensitivity; therefore, they need moral rules and the duty to stick to these rules. This, however, is not the pinnacle of morality, but a surrogate used for want of the real thing. Kant’s conscience is, in the final reckoning, in a similar position to Smith’s duty; he may not so clearly see it as merely the next-best thing, but this is probably because Kant does not know anybody who has even come close to moral perfection, rather than because conscience *is* in fact not merely the next-best thing. Conscience is necessary because people generally do not have the pure ‘Gesinnung’ that perfect morality requires. An important difference between Kant and Smith lights up at the same time: Smith’s conscience *is* concerned with inner motives. Moral perfection, for Smith, would lie in the complete interiorization of and identification with the impartial spectator. But Smith, too, is aware of the fallibility of the impartial spectator, as it is, after all, a human construct.<sup>118</sup> Finally, it is worth noting that Kant and Hume also both agree and completely disagree with each other with regard to the *locus* of moral worth. They agree that moral worth depends on intentions and motives; they fully disagree in what constitutes a worthy motive. The only truly moral motive for Kant is duty itself; for Hume, the opposite is true: something done from nothing other than a sense of duty is morally worthless.<sup>119</sup>

The last question I will consider with regard to Kant’s descriptions of conscience is how they relate to experience. I have already said that Kant’s symbolic language is not primarily expressive of experiences of conscience, but rather used in an indicative fashion. With Kant, as with Smith, conscience is too much locked up in a philosophical system for the concept to do justice to the plurality of experiences of conscience. Kant’s conceptual

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Idee der Pflicht aus dem Gesetze zugleich die Triebfeder der Handlung ist, die Moralität (Sittlichkeit) derselben.”; Kant (1999b), 33 (‘Siebenter Satz’): “Alles gute (...) das nicht auf moralisch-gute Gesinnung gepropft ist, ist nichts als lauter Schein und schimmerndes Elend.”; cf. also Kant (1998), 240ff, especially 250 (part II, ‘Methodenlehre’), and Kant (2002), part I, 37-38.

<sup>118</sup> See, for instance, Smith (1982b), 131 (III.2.32) and 247 (VI.iii.25).

<sup>119</sup> Hume (2000), 308: “In short, it may be established as an undoubted maxim, *that no action can be virtuous, or morally good, unless there be in human nature some motive to produce it, distinct from the sense of its morality.*”

inconsistencies are at least partly due to other aspects of the experience of conscience bursting through the systematic framework. But there is a relation with experience. Kant's concept of conscience suggests a particular, (to me) readily recognizable phenomenology of conscience: that of the nagging feeling or the accusing voice that haunts you when you know you have done something wrong – that is, something which you held to be wrong. It happens quite often that people do things while, even at the time of the action (or before), they know they should not do it. Then there is the contrast between acknowledged duty and an action that contradicts this knowledge and this duty. Kant reduces conscience to this particular manifestation of it, and this makes his concept one-sided, but it is nevertheless a recognizable concept of conscience, with a recognizable relation to experience.

#### 5.2.2.3. *The relation to casuistry*

“In [Kant's] moralphilosophie”, Kittsteiner says, “führt die Kasuistik ein – zumeist nur wenig beachtetes – Nachleben.”<sup>120</sup> There is no place for it in the ‘Rechtslehre’, because its duties are strict: they are to be fulfilled by prescribed actions. In ethics, duties are ‘wide’; that is, they relate to the *maxims* for action, rather than to the actions themselves. And so the question may arise how a certain maxim is to be applied in a particular case, which leads to casuistry.<sup>121</sup> Kant discusses several ‘cases of conscience’: suicide, sex for other purposes than procreation, and intoxication, for instance. Another – famous – example is the question whether one is allowed to lie to save someone's life, about which Kant wrote an article in 1797: “Über ein vermeintes Recht aus Menschenliebe zu lügen”. Where casuistry would have said: “Yes, under such extreme circumstances as brought forward here, where a person's life depends on it, you may lie”, Kant answers: “No”, adding a curious amplification, which need not bother us here. So, Kittsteiner asks, what is the function of this example for Kant? “Handelt es sich überhaupt noch um ein Beispiel im Sinne der Kasuistik?” His answer begins with the observation that “Kant (...) der Kasuistik einen neuen Begriff des Gewissens gegenüber[stellt]”.<sup>122</sup> It is not a question for him how the conscience should be guided, for, as we have seen, it needs no guide. Conscience does not judge actions (as cases) as exemplifications of a particular law, for that is the work of practical reason. Conscience is practical reason asking itself “ob sie auch wirklich jene Beurtheilung der Handlungen mit aller Behutsamkeit (ob sie recht oder unrecht sind) übernommen habe, und stellt den Menschen wider oder für sich selbst zum Zeugen auf, daß

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<sup>120</sup> Kittsteiner (1995), 205.

<sup>121</sup> Kant (1995b), 497 (‘Einleitung zur Tugendlehre’ XVIII, ‘Anmerkung’).

<sup>122</sup> Kittsteiner (1995), 206.

dieses geschehen oder nicht geschehen sei.”<sup>123</sup> So Kant departs from traditional casuistry, which he labels ‘eine Art von Dialektik des Gewissens’, which is explained by Kittsteiner as a “‘natürliche Dialektik’ die im Namen der Affekte und Wünsche gegen das moralische Gesetz und den Kategorischen Imperativ rebelliert”.<sup>124</sup> Casuistry is the ally of desires and impulses that run counter to the moral law. “Die Kasuistik ist überhaupt nur entstanden aus der Neigung der Sinne, die Erhabenheit des Sittengesetzes zu ruinieren.”<sup>125</sup>

Kant opposes the laxity of casuistry with the rigour of Reason.<sup>126</sup> He shares the Pascalian contempt for probabilism:

“Es ist auch nicht schlechthin nothwendig, von allen möglichen Handlungen zu wissen, ob sie recht oder unrecht sind. Aber von der, die ich unternehmen will, muß ich nicht allein urtheilen und meinen, sondern auch gewiß sein, daß sie nicht unrecht sei, und diese Forderung ist ein Postulat des Gewissens, welchem der Probabilismus, d. i. der Grundsatz entgegengesetzt ist: daß die bloße Meinung, eine Handlung könne wohl recht sein, schon hinreichend sei, sie zu unternehmen.”<sup>127</sup>

In its stead, Kant places the *Categorical Imperative*. What is right is right, and what is wrong is wrong – no matter what the circumstances or consequences are.<sup>128</sup> The most striking example of this line of reasoning is the following:

“Es sei z. B. der Fall: daß jemand ein anvertrautes fremdes Gut (depositum) in Händen habe, dessen Eigentümer tot ist, und daß die Erben desselben davon nichts wissen, noch je etwas erfahren können. Man trage diesen Fall

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<sup>123</sup> Kant (1995a), 223 (IV.ii.4).

<sup>124</sup> Kittsteiner (1995), 207.

<sup>125</sup> Idem.

<sup>126</sup> I will come back to Kittsteiner’s remark that “Kants Ethik wäre mißverstanden, wollte man sie nur mit dem Etikett des ‘Rigorismus’ bekleiden” (Kittsteiner [1995], 285).

<sup>127</sup> Kant (1995a), 222 (IV.ii.4).

<sup>128</sup> The similarities between Kant’s and Thomas Aquinas’ views of conscience are often remarked upon, and rightly so, but here is an important difference. As Little points out, “it seems clear that Kant does place greater stress upon conscience as accuser and judge than as guide and director, which is Thomas’ emphasis. For Thomas, conscience, properly associated with the principles of *συντηρησις*, directs man, above all, to his good, or his ultimate happiness. (...) But Kant will not agree that conscience is first of all grounded in the rational pursuit of happiness, or in prudence. ‘We must (...) differentiate between the judgment of prudence and the judgment of conscience (...). (...) [*H*]e who has a sense of the wickedness of the deed itself, be the consequences what they may, has a conscience.’” Little (1971), 23-24; he quotes from Immanuel Kant, *Lectures on Ethics*, L. Infield (transl.), Harper & Row, New York, 1963, 130; the italics are Little’s.

selbst einem Kinde von etwa acht oder neun Jahren vor, und zugleich, daß der Inhaber dieses Depositums, (ohne sein Verschulden) gerade um diese Zeit in gänzlichen Verfall seiner Glücksumstände geraten, eine traurige, durch Mangel niedergedrückte Familie von Frau und Kindern um sich sehe, aus welcher Not er sich augenblicklich ziehen würde, wenn er jenes Pfand sich zueignete; zugleich sei er Menschenfreund und wohlthätig, jene Erben aber reich, lieblos und dabei im höchsten Grad üppig und verschwenderisch, so daß es eben so gut wäre, als ob dieser Zusatz zu ihrem Vermögen ins Meer geworfen würde. Und nun frage man, ob es unter diesen Umständen für erlaubt gehalten werden könne, dieses Depositum in eigenen Nutzen zu verwenden. Ohne Zweifel wird der Befragte antworten: Nein! und statt aller Gründe nur bloß sagen können: *es ist unrecht*, d. i. es widerstreitet der Pflicht. Nichts ist klärer als dieses...<sup>129</sup>

Here is a situation in which the answer of casuists would be clear; in which, I assume, *our* answer would be clear as well – and it would be the opposite of Kant’s answer. Preceding the above example is a statement concerning the concept of duty – that, in its total purity, it is so much simpler, clearer, so much more easily applicable for everybody, and more natural, than any motive relating to ‘Glückseligkeit’; and not only that: even in the judgement of those of the meanest intellectual capacities, it is a much stronger and much more effective motive. Kant is obviously very pleased with the concept of duty, and his satisfaction with it seems to be, at least partly, of an aesthetic nature. It is the clarity, simplicity, and purity of the concept that makes it so attractive – much like a mathematical proof. Kant, rather than rejecting the rigorous adherence to duty in view of the complexities of the world, applauds it for its simplicity. In this respect it is quite interesting that Kant says that *even* an eight- or nine-year-old child would know the answer. In the psychology of moral development, strict adherence to unquestionable rules belongs to the first stage (both in Piaget’s and in Kohlberg’s theory); an eight- or nine-year-old child will typically be in that stage, and say that something should not be done ‘because it is bad’ or ‘because it is against the law’. We regard this as immature moral thinking; Kant does not hesitate to invoke it as support for his argument. He maintains that it *is* that simple, and that it is *so* simple that even a child that age understands it. Moreover, he does not consider the difference that there must be between the reasoning of a child of that age and his own reasoning, which, in Kohlbergian terms, belongs at least partly to stage four (the second stage on the level of conventional morality). It is also unlikely that the child would have the same

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<sup>129</sup> Kant (1999c), 132. Kittsteiner (1995), 207, points out that Kant had discussed the case for the first time five years earlier, in 1788.

kind of ‘Achtung’ for the law Kant had, but however this may be, the child’s reasoning is equally simple and rigorous as Kant’s.<sup>130</sup>

Kant came from a pietistic family. His way of life showed the concern for order and discipline that we would expect from someone in that environment. The above example of moral reasoning also shows Kant to be a puritan, whether he was a devout Christian or not. He had (and advocated, as we will see under D) a puritan’s lifestyle, and he had a great concern for purity. From the latter derives his attitude to traditional casuistry, to which he opposed his own kind of casuistry, which Kittsteiner dubs the *‘negative Kasuistik’* of the Categorical Imperative, “die auf alle Anfragen aus dem Bereich des Besonderen und Einzelnen immer nur mit der stereotypen Antwort bereitsteht: ‘Handle so, daß die Maxime deines Willens jederzeit zugleich als Princip einer allgemeinen Gesetzgebung gelten könne’.”<sup>131</sup> Kant freed people from external authorities, from people who ‘guided’ their consciences; but while the casuists were willing to take the contingencies of life into account, Kant stressed the categorical nature of the moral imperative. ‘Thou shalt not’ knows of no contingencies. The orthodoxy of Reason was accompanied by another feature of this faculty: it offered the way to salvation. Our first duty, Kant wrote, is to know ourselves. ‘Moral self-knowledge is the beginning of all human wisdom.’ To come to such wisdom requires, first of all, that inner hindrances be removed; that is: an evil will. Next, it requires

“die Entwicklung der nie verlierbaren ursprünglichen Anlage eines guten Willens in ihm zu entwickeln (nur die Höllenfahrt des Selbsterkenntnisses bahnt den Weg zur Vergötterung).”<sup>132</sup>

The bracketed remark is in truly Lutheran vein, with that important exception that for Kant man awaits no other grace than that which he bestows upon himself. Reason, autonomy, and morality are what distinguish man from beast. In the pinnacle of morality, the ‘Achtung’ and the ‘Liebe’ for the moral law, man realizes his full dignity. In this context Kant speaks of the ‘sublime’, ‘das Erhabene’.

“[D]ie echte Triebfeder der reinen praktischen Vernunft (...) ist keine andere, als das reine moralische Gesetz selber, so fern es uns die Erhabenheit unserer eigenen übersinnlichen Existenz spüren läßt...”<sup>133</sup>

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<sup>130</sup> Kant refers to (young) children in support of his arguments elsewhere, too; see, for instance, Kant (2002), part II, 53-54 (note 2); Kant (1998), 160 (I.I.3).

<sup>131</sup> Kittsteiner (1995), 208.

<sup>132</sup> Kant (1995b), 531 (‘Ethische Elementarlehre’, I.i.2.2 [§ 14]).

<sup>133</sup> Kant (1998), 142 (I.I.3); also quoted in Kittsteiner (1995), 277.

Kittsteiner comments: “Dieses Gefühl der ‘Erhabenheit’ kann erst erwachsen auf der Ausschaltung der ‘Gnade’ aus den Funktionen des Gewissens. Der ideale Bürger der Aufklärung naht sich Gott nicht mehr als unveränderlicher Sünder, der passiv die rechtfertigende Gnade empfängt; an Stelle des erlösenden Opfers Christi bringt er das mit sich selbst versöhnende Opfer in eigenen Person: im schmerzhaften Einschränken der Lust, im Abbruch an der Neigung, in der Niederschlagung der Selbstliebe. Hat er diese Leistung aber erbracht, so gehört auch das Gefühl des Triumphes ihm selbst. Was Kant der Gnade nimmt, gibt er dem Gefühl der menschlichen Würde.”<sup>134</sup> Hence Kittsteiner’s caution that Kant’s ethics cannot merely be labeled an ethics of ‘rigourism’: “nicht zu übersehen ist der Anteil des narzißtischen Gewinns der Selbstbilligung, wenn ihr auch alle Züge einer möglichen Herkunft aus einer sozialen Billigung abgeschnitten sind. Auch die Annahme durch einen gnädigen Gott ist ausgestrichen; das ich spricht seine Gnade selbst aus.”<sup>135</sup>

In conclusion, however valuable Kittsteiner’s observation may be, it seems to me that we should take care not to think too much of the ‘feeling of Triumph’ adhering to the ‘self-justification’. First of all, Kant’s emphasis on the difficult way to this triumph is far greater than that on the triumph itself; his work is full of examples of the most stringent orthodoxy. A very striking one is the following:

“Die Absicht derer, die am Ende des Lebens einen Geistlichen rufen lassen, ist gewöhnlich: daß sie an ihm einen Tröster haben wollen; nicht wegen der physischen Leiden (...), sondern wegen der moralischen, nämlich der Vorwürfe des Gewissens. Hier sollte nun dieses eher aufgeregt und geschärft werden um, was noch Gutes zu thun, oder Böses in seinen übrig bleibenden Folgen zu vernichten (reparieren) sei, ja nicht zu verabsäumen (...). An dessen Statt aber gleichsam Opium fürs Gewissen zu geben, ist Verschuldigung an ihm selbst und andern, ihn Überlebenden; ganz wider die Endabsicht, wozu ein solcher Gewissensbeistand am Ende des Lebens für nöthig gehalten werden kann.”<sup>136</sup>

Secondly, once the battle is won, the war is not over: “[S]eine Freiheit, die beständig angefochten wird, zu behaupten, muß er forthin immer zur Kampfe gerüstet bleiben.”<sup>137</sup> Thirdly, Kant stresses the negative nature of the (feeling of) the good conscience; as to the acquittal by one’s conscience, it should be noted

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<sup>134</sup> Kittsteiner (1995), 277.

<sup>135</sup> Ibid., 285.

<sup>136</sup> Kant (1995a), 97 (II.1c).

<sup>137</sup> Ibid., 112 (III).



“daß [der rechtskräftige Spruch des Gewissens über den menschen, ihn loszusprechen] nie eine Belohnung (*praemium*), als Gewinn von etwas, was vorher nicht sein war, beschließen kann, sondern nur ein Frohsein, der Gefahr, strafbar befunden zu werden, entgangen zu sein, enthalte und daher die Seligkeit in dem trostreichen Zuspruch seines Gewissens nicht positiv (als Freude), sondern nur negativ (Beruhigung nach vorhergegangener Bangigkeit) ist, was der Tugend, als einem Kampf gegen die Einflüsse des bösen Princip im Menschen, allein beigelegt werden kann.”<sup>138</sup>

#### 5.2.2.4. *The education of conscience*

Adam Smith expressed his view of man in the following lines:

“None but those of the happiest mould are capable of suiting, with exact justness, their sentiments and behaviour to the smallest difference of situation, and of acting upon all occasions with the most delicate and accurate propriety. The coarse clay of which the bulk of mankind are formed, cannot be wrought up to such perfection. There is scarce any man, however, who by discipline, education, and example, may not be so impressed with a regard to general rules, as to act upon almost every occasion with tolerable decency, and through the whole of his life to avoid any considerable degree of blame.”<sup>139</sup>

I quote him here in order to show something of what belonged to the standard repertoire of eighteenth century thought – for compare the above with these remarks Kant makes:

“[A]us so krummem Holze, als woraus der Mensch gemacht ist, kann nichts ganz gerades gezimmert werden. Nur die Annäherung zu dieser Idee ist uns von der Natur auferlegt.”<sup>140</sup>

“Welchen Ertrag wird der Fortschritt zum Besseren dem Menschengeschlecht abwerfen?

Nicht ein immer wachsendes Quantum der *Moralität* in der Gesinnung, sondern Vermehrung der produkte ihrer *Legalität* in pflichtmäßigen Handlungen, durch welche Triebfeder sie auch veranlaßt sein mögen; d. i. in den guten *Taten* der Menschen, die immer zahlreicher und besser ausfallen werden, also in den Phänomenen der sittlichen Beschaffenheit des Menschengeschlechts, wird der Ertrag (das Resultat) der Bearbeitung desselben zum Besseren allein gesetzt werden können.”<sup>141</sup>

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<sup>138</sup> Kant (1995b), 530 (‘Ethische Elementarlehre’, I.i.2.1 [§ 13]).

<sup>139</sup> Smith (1982b), 162-163 (III.5.1).

<sup>140</sup> Kant (1999b), 29 (‘Sechster Satz’).

<sup>141</sup> Kant (1999a), 197-198 (II, question 9).

Kant was concerned with and for the moral improvement of mankind – a difficult task, so he (like other Enlightenment thinkers) realized. Man needs to conquer evil in himself first, and he cannot do so alone, because “*der Mensch ist ein Tier, das, wenn es unter andern seiner Gattung lebt, einen Herrn nötig hat.*” Otherwise, he would misuse his freedom in all manner of ways. Even if, as a reasonable creature, he desires a law to limit the freedom of all, his ‘selbstsüchtige tierische Neigung’ will seduce him to make an exception for himself.

“Er bedarf also einen *Herrn*, der ihm den eigenen Willen breche und ihn nötige, einem allgemeingültigen Willen, dabei jeder frei sein kann, zu gehorchen.”<sup>142</sup>

In line with this somewhat frightening remark, Kant believes that the improvement of mankind – the German part of it, I suppose, to begin with – should be furthered, and should proceed, ‘top-down’, rather than ‘bottom-up’. We cannot expect the education of the young at home or in schools to produce good citizens and to raise them “zum Guten, was immer weiter fortschreiten und sich erhalten kann”, as long as this education is not part of a unified programme, designed by the state for this exact purpose.<sup>143</sup>

Kant did his best to think along with the state in order to come to a proper programme of education. A crucial precondition for (some) success is that there is something that (moral) education can link up with. There is indeed in the human constitution such a point of contact; this is the Kantian rendering of the principle of ‘synderesis’ (though he did not use that term).<sup>144</sup> He gives us different formulations of this principle; in *Die Religion innerhalb der Grenzen der bloßen Vernunft*, where Kant discusses the question how a naturally evil man can turn himself into a good man, he says:

“Freilich muß hiebei vorausgesetzt werden, daß ein Keim des Guten in seiner ganzen Reinigkeit übrig geblieben, nicht vertilgt oder verderbt werden konnte, welcher gewiß nicht die Selbstliebe sein kann, die, als Princip aller unserer Maximen angenommen, gerade die Quelle alles Bösen ist. Die Wiederherstellung der ursprünglichen Anlage zum Guten in uns ist also nicht Erwerbung einer verlorenen Triebfeder zum Guten; denn diese, die in der Achtung fürs moralische Gesetz besteht, haben wir nie verlieren können, und wäre das letztere möglich, so würden wir sie auch nie wieder erwerben.”<sup>145</sup>

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<sup>142</sup> Kant (1999b), 28 (‘Sechster Satz’).

<sup>143</sup> Kant (1999a), 199 (II, question 10).

<sup>144</sup> Cf. Kittsteiner (1995), 273.

<sup>145</sup> Kant (1995a), 60-62 (I, ‘Allgemeine Anmerkung’).

Here, Kant's 'synderesis' is the respect for the moral law that is implanted in man as a seed of the good – exactly like Reid's conscience, which was also compared to a seed that had to be cultivated. Kant emphasizes that it is not enough to give the seed the freedom to develop; we must actively engage the enemy within us. The cultivation of good requires a fight against evil.<sup>146</sup> Elsewhere, Kant speaks of the removal of the obstacles on the road to wisdom, and "die Entwicklung der nie verlierbaren ursprünglichen Anlage eines guten Willens".<sup>147</sup> The Kantian 'synderesis', then, is of a more affective nature than conscience – although we must remember that Kant also counted 'conscience' among the 'Ästhetische Vorbegriffe der Empfänglichkeit des Gemüths für Pflichtbegriffe überhaupt'. Kant's conscience, at any rate, has some features of what was traditionally called 'synderesis'; for one, that every man is born with a conscience. Then again, that was Bonaventure's position too. It seems, in fact, that Kant is much closer to Bonaventure than to Aquinas, with whom he is usually associated. Like Bonaventure, Kant distinguishes between an affective or volitional element (analogous to Bonaventure's 'synderesis'), and an intellectual element ('conscience'); for both thinkers, both 'synderesis' and conscience are innate.<sup>148</sup> There is, then, in Kant's thought, a point of contact for moral education in man. Instruction has the double task of stimulating the cultivation of this innate disposition towards the good, and of aiding the battle against the natural evil in man.

Kant laid down the basic principles of such an education in his small work *Über Pädagogik*, in which conscience has an important place.<sup>149</sup> The basic need for education is posited in the first paragraph:

"Der Mensch ist das einzige Geschöpf, das erzogen werden muß. Unter der Erziehung nämlich verstehen wir die Wartung (Verpflegung, Unterhaltung), Disziplin (Zucht) und Unterweisung nebst der Bildung. Demzufolge ist der Mensch Säugling -- Zögling -- und Lehrling."<sup>150</sup>

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<sup>146</sup> Ibid., 72 (II).

<sup>147</sup> Kant (1995b), 531 ('Ethische Elementarlehre', I.i.2.2 [§ 14]).

<sup>148</sup> Langston misses this resemblance completely, but then, we have already seen that he unjustly blamed Kant for propounding a faculty view of conscience. As to the comparison between Bonaventure and Kant: for the former, the liability to err arises with the applied conscience; in Kant's system, practical reason occupies this place.

<sup>149</sup> It is also worth noting that the *Metaphysik der Sitten* ends with the 'Ethische Methodenlehre', which contains an 'ethische Didaktik' and an 'ethische Ascetik'. The former is concerned with the acquisition of the virtues, 'the first and most necessary instrument' for which is a *moral catechism*, modelled after the religious catechism, but independent from it. The latter concerns the 'culture of virtue'; it is "eine Art von Diätetik für den Menschen, sich moralisch gesund zu erhalten" (Kant [1995b], 575-592).

<sup>150</sup> Kant [1803], 1.

Education as Kant sees it aims at the cultivation of conscience – not merely at controlling outward behaviour. This is evident from his preference for *moral* rather than *physical* punishment:

“Alle Übertretung eines Gebotes bei einem Kinde ist eine Ermangelung des Gehorsams, und diese zieht Strafe nach sich. Auch bei einer unachtsamen Übertretung des Gebotes ist Strafe nicht unnötig. Diese Strafe ist entweder **PHYSISCH** oder **MORALISCH**.

**MORALISCH** straft man, wenn man der Neigung, geehrt und geliebt zu werden, die Hilfsmittel der Moralität sind, Abbruch tut, z. E. wenn man das Kind beschämt, ihm frostig und kalt begegnet. Diese Neigungen müssen soviel als möglich erhalten werden. Daher ist diese Art zu strafen die beste, weil sie der Moralität zu Hilfe kommt, z. E. wenn ein Kind lügt, so ist ein Blick der Verachtung Strafe genug und die zweckmäßigste Strafe.

**PHYSISCH** Strafen bestehen entweder in Verweigerungen des Begehrten oder in Zufügung der Strafen. Die erstere Art derselben ist mit der moralischen verwandt und ist negativ. Die andern Strafen müssen mit Behutsamkeit ausgeübt werden, damit nicht eine **INDOLES SERVILIS** entspringe. Daß man Kindern Belohnungen erteilt, taugt nicht, sie werden dadurch eigennützig, und es entspringt daraus eine **INDOLES MERCENARIA**.<sup>151</sup>

Kant does not want children to become ‘merchants’, trading good behaviour for rewards, or ‘slaves’, obeying from fear of physical punishment; he wants them to develop a conscience, and the method by which parents can stimulate this comes down to the same thing Smith says about the natural development of conscience: the approval and disapproval of the people around us make us set up in ourselves an impartial spectator, which, in turn, becomes (more or less) independent from the approval or disapproval of real spectators – as Kant envisages conscience to be. For the exact reason that education has to educate for autonomy, Kant rejects ‘Disziplin’, by which he means that outward obedience is enforced by means of punishment (and reward). That is, discipline is necessary to counter the animal tendencies in man, to control the inner savage, but *cultivation* is necessary to make man moral.<sup>152</sup> Kant shows himself to be a true Enlightenment pedagogue, in emphasizing that children need to *understand* what they did wrong, and *why* it was wrong. Parents should give reasons and stimulate the child’s susceptibility to them, even when the child is still very young. It should be given the concepts of (what is) good and (what is) evil at an early age. Discipline (in the sense explained above) only leads to a habit that is easily lost; to punish bad and to reward good behaviour leads a child to do good

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<sup>151</sup> Ibid., 103-104.

<sup>152</sup> Ibid., 22.

merely ‘um es gut zu haben’.<sup>153</sup> Hence, parents should make use of a child’s moral emotions (for instance by showing contempt, rather than punishing a child that tells a lie), and ‘moral culture’ should be based on *maxims*. This will give the child the necessary independence in a world where good behaviour is often *not* rewarded by others:

“[Die Kinder] müssen lernen, die Verabscheuung des Ekels und der Ungereimtheit an die Stelle der des Hasses zu setzen; innern Abscheu statt des äußern vor Menschen und der göttlichen Strafen, Selbstschätzung und innere Würde statt der Meinung der Menschen -- innern Wert der Handlung und das Tun statt der Worte und Gemütsbewegung, -- Verstand statt des Gefühles -- und Fröhlichkeit und Frömmigkeit bei guter Laune statt der grämischen, schüchternen und finstern Andacht eintreten zu lassen.”<sup>154</sup>

If one wishes to ground morality, Kant says, one should not punish.

“Moralität ist etwas so Heiliges und Erhabenes, daß man sie nicht so wegwerfen und mit Disziplin in einen Rang setzen darf. Die erste Bemühung bei der moralischen Erziehung ist, einen Charakter zu gründen. Der Charakter besteht in der Fertigkeit, nach Maximen zu handeln.”<sup>155</sup>

At first these will be school maxims; later they will be those of mankind. In the beginning the child will obey laws; later, it will obey maxims, which are subjective laws that reason gives itself.<sup>156</sup> In what follows Kant introduces the concept of conscience, but again in a ‘synderesis’-like fashion:

“Zuerst muß man bei dem Kinde von dem Gesetze, das es in sich hat, anfangen. Der Mensch ist sich selbst verachtenswert, wenn er lasterhaft ist.”<sup>157</sup>

“Das Gesetz in uns heißt Gewissen. Das Gewissen ist eigentlich die Applikation unserer Handlungen auf dieses Gesetz. Die Vorwürfe desselben werden ohne Effekt sein, wenn man es sich nicht als den Repräsentanten Gottes denkt, der seinen erhabenen Stuhl über uns, aber auch in uns einen Richterstuhl aufgeschlagen hat. Wenn die Religion nicht zur moralischen Gewissenhaftigkeit hinzukommt: so ist sie ohne Wirkung.

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<sup>153</sup> Ibid., 98-99. Cf. Little’s remark that for both Calvin and Kant, “the conscience is precisely not free, so long as it adopts as a starting-point prudential calculations” (Little [1971], 27).

<sup>154</sup> Ibid., 129.

<sup>155</sup> Ibid., 100.

<sup>156</sup> Idem.

<sup>157</sup> Ibid., 133.

Religion ohne moralische Gewissenhaftigkeit ist ein abergläubischer Dienst.”<sup>158</sup>

Religion is nothing (or nothing good) if it does not serve a moral purpose. There are those who praise God – his power, and his wisdom – without wondering whether and how they fulfil his laws. “Diese Lobpreisungen sind ein Opiat für das Gewissen solcher Leute und ein Polster, auf dem es ruhig schlafen soll.”<sup>159</sup>

Towards the conclusion of his work on education, Kant connects his instructions for the youth with an ideal of the citizen and of society. The youth should be taught not to esteem himself in relation to others; to *be* conscientious, rather than merely to appear so; to be content with regard to outward circumstances, to be patient in work, and moderate in pleasure.

“Wenn man nicht bloß Vergnügungen verlangt, sondern auch geduldig im Arbeiten sein will, so wird man ein brauchbares Glied des gemeinen Wesens und bewahrt sich vor Langeweile.”<sup>160</sup>

By means of self-discipline, Kant says, people can train themselves to become ‘cheerful’ companions in society.<sup>161</sup> The youth must be stimulated to regard many things as their duty, and to see the value of things as lying, not in their correspondence with our inclinations, but in their being our duty. Moreover, they must be encouraged in their

“Menschenliebe gegen andere und dann auch auf weltbürgerliche Gesinnungen. In unserer Seele ist etwas, daß wir Interesse nehmen 1) an unserm Selbst, 2) an andern, mit denen wir aufgewachsen sind, und dann muß 3) noch ein Interesse am Weltbesten stattfinden. Man muß Kinder mit diesem Interesse bekannt machen, damit sie ihre Seelen daran erwärmen mögen. Sie müssen sich freuen über das Weltbeste, wenn es auch nicht der Vorteil ihres Vaterlandes oder ihr eigener Gewinn ist.”<sup>162</sup>

With Kant, then, we see that conscience, though often couched in traditional formulations, is a key term in a new anthropology and a new view of society. If individuals cannot hope to achieve the end of moral progress in their own

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<sup>158</sup> Ibid., 134.

<sup>159</sup> Idem. Cf. Kant (1995a), 97 (II.1c), where (as we have seen) Kant also voiced his concern that conscience might be drugged and put to sleep.

<sup>160</sup> Ibid., 144.

<sup>161</sup> ‘Geselligkeit’ should be part of the child’s character; *ibid.*, 109.

<sup>162</sup> *Ibid.*, 145.

lives, they can at least comfort themselves with the thought that mankind may reach it.<sup>163</sup> The last duty for the educator, then, is to point man towards

“die Notwendigkeit endlich der Abrechnung mit sich selbst an jedem Tage, damit man am Ende des Lebens einen Überschlag machen könne in betreff des Wertes seines Lebens.”<sup>164</sup>

### 5.3. EVALUATION: PROSPECTS FOR THE NEW CONSCIENCE

In a sense, Kant epitomizes the Enlightenment problem of grounding the authority of conscience, while he, in fact, made the most impressive effort to find a basis for it. A failure is simply most noticeable when a serious attempt was made. The problem is old, but for those in the seventeenth and eighteenth century who attempted to redefine conscience and to provide it with a new anchorage, be it in Nature or Reason, it went back most directly to Hobbes and Locke, for the latter of whom the authority of conscience might just as well have been the authority of some old woman. Locke’s view was related to his rejection of any innate ideas and principles. Traditionally, conscience had been thought of as at least partly innate and God-given. Enlightenment thinkers sought a compromise, and found it in a combination of an innate disposition that required cultivation on the one hand, and acquired knowledge on the other. Despite the ingenuity of the compromise between the ideas of conscience as innate or acquired, symbolized in the seed-metaphor, however, the seeds were sown for further, more damaging criticism than that from which this compromise had emerged. Conceptually, the connection between conscience and God was gradually weakened, with serious implications for the authority of conscience. Several thinkers came to see conscience as a faculty, thus paving the way, as Langston rightly points out, for a rejection of conscience through a rejection of the notion of faculties. More generally, the term ‘conscience’ was more and more used in an (increasingly) indicative way, which would encourage later thinkers to search for what was indicated by the sign ‘conscience’ – a search that would lead to nothing. The more or less exclusive association, mostly by moral sense theorists, of conscience with the affects caused another problem. It constituted the beginning of the intuitionist concept of conscience, and with that, of the mythologization of conscience that was a prerequisite for nineteenth-century demythologization. The latter also related to what would

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<sup>163</sup> See Kant (1999b), 29 (note to the ‘Sechster Satz’): “Die Rolle des Menschen ist also sehr künstlich. Wie es mit den Einwohnern anderer Planeten und ihrer Nature beschaffen sei, wissen wir nicht (...). Vielleicht mag bei diesen ein jedes Individuum seine Bestimmung in seinem Leben völlig erreichen. Bei uns ist es anders; nur die Gattung kann dieses hoffen.”

<sup>164</sup> Kant [1803], 146.

then be considered as the myth of Reason, more accurately: of man as a reasonable and rational creature. In retrospect then – but only in retrospect – we can say that the prospects for the new concept(s) of conscience were gloomy.

Especially in Smith and Kant, we have seen a remarkable Stoic influence. The elements of self-command, ‘autarkeia’, and (in Smith’s case) a form of ‘oikeosis’ come to mind. Related to the latter is a feature that characterized Enlightenment thought in general, a feature we might call ‘universalism’. Enlightenment thinkers spoke about (and for) all mankind, so they thought. We have seen Bishop Butler speak with confidence of ‘all civil constitutions over the face of the earth’. When Kant spoke of the dignity of man, he did not merely refer to the Prussians, but to mankind, and to that in it that distinguished man from beast. But there is a rub. Smith’s *The Theory of Moral Sentiments*, for instance, speaks in the language of universalism, but its pages breathe parochialism – in style, but often also in content. He writes, for instance:

“I cannot (...) be induced to believe that our sense even of external beauty is founded altogether on custom. The utility of any form, its fitness for the useful purposes for which it was intended, *evidently* recommends it, and renders it agreeable to us, independent of custom. Certain colours are more agreeable than others...”<sup>165</sup>

And when he speaks of the ‘rude forests of nature’ that have been turned into ‘agreeable and fertile plains’, I cannot believe that Smith’s sense of what is agreeable can lay claim to universality.<sup>166</sup>

Enlightenment ‘universality’ is bound up with a new conception of history and society. This is remarkable in view of the Stoic influence on Enlightenment thought. The ‘Weltanschauung’ of Stoicism emphasized the uncontrollability of the external world, in view of which man needs to control himself, in order to free himself from the external world. It is as a ‘Weltanschauung’ that Stoicism was highly influential in the Renaissance and in the Enlightenment. But in the latter period, paradoxically, the Stoic

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<sup>165</sup> Smith (1982b), 199 (V.1.9) (my italics). This is not to say that Smith does not recognize differences in custom; he speaks of differences between countries, as well as between ‘savages’ and ‘civilized’ people.

<sup>166</sup> Ibid., 183 (IV.1.10). A third example: when Smith writes (210, V.2.15) that “[o]ne who, in flying from an enemy, whom it was impossible to resist, should throw down his infant, because it retarded his flight, would surely be excusable; since, by attempting to save it, he could only hope for the consolation of dying with it”, this seems to reflect a time when parental feelings for children were in certain respects less intense than many people today would expect. Even if the behaviour is understandable, it is highly problematic (to me, anyway); Smith speaks too strongly and too easily in the cold voice of reason here.



worldview and anthropology are deployed as a crucial instrument in the worldly project of the self-realization and perfection of man and society – this is what we might call the ‘inverted Stoicism’ of the Enlightenment. On the one hand, this strategy is still based on the thought that external goods (including the praise of others) are beyond our control; on the other hand it is driven by the idea of the malleability and perfectibility of society. Self-command is no longer just an instrument of individual ‘autarkeia’, but also, and more importantly, a tool for the adjustment of social relations. In this form, Stoicism was in many respects the reasonable Christian faith of the modern world.<sup>167</sup>

The eighteenth century saw the birth of philosophical history, which entailed the attempt to write a universal history of mankind from its savage beginnings to its civilized state (in Western Europe). References to the ‘savage’ (whether considered as ‘noble’ or not) serve a double purpose: on the one hand, they are essential to a contrastive construction of European (civilized) identity; on the other, they serve to support a linear progress view of the development of society. Smith speaks with limited knowledge but less limited admiration of savages and barbarians; to him, the savage is noble in many respects – though that does not inhibit his view of human progress.<sup>168</sup> Even Kant, who hardly ventured beyond the borders of his hometown Königsberg, felt at liberty to write about the ‘Arathapescau- und den Hundsribben-Indianen’, living in perpetual state of war with each other, a war with no other purpose than ‘bloß das Todtschlagen’.<sup>169</sup> In Kant’s case the admiration was lacking. Enlightenment thinkers in general saw human progress, including the moral improvement of man himself, as an attainable ideal.<sup>170</sup> They believed in a science of human nature as a means to attain this ideal.<sup>171</sup> The knowledge this provided could be used to educate people to their full humanity. Kant advised: “lebe der Natur gemäß”, but also: “mache dich vollkommener, als die bloße Natur dich schuf”.<sup>172</sup> Individual (moral) progress went hand in hand with that of society (and Western society represented the progress of mankind) – an ethics of self-realization with a political programme. Under the influence of social contract theory, society came to be seen, atomistically, as a collection of individuals, each with their own motion; hence they often collided. This element of competition had to be harnessed and restrained, but could then be put to use, as Smith explained

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<sup>167</sup> See chapter 3 and Salomon (1963), chapter 1.

<sup>168</sup> *Ibid.*, 205ff. (V.2.8ff.).

<sup>169</sup> Kant (1995a), 45 (first note to I.III).

<sup>170</sup> Kant did make some reservations, which I have noted before.

<sup>171</sup> A science which, in Hobbes’ days, was still in its infancy, as Smith observes (Smith [1982b], 319; VII.iii.2.5).

<sup>172</sup> Kant (1995b), 504 (‘Ethische Elementarlehre’ I, § 4). Cf. Smith (1982b), 168 (III.5.9).

most clearly in his seminal *Wealth of Nations*. That Smith conceived of society as a collection of individuals is also evident from his remark that

“[w]e are no more concerned for the destruction or loss of a single man, because this man is a member or part of society, and because we should be concerned for the destruction of society, than we are concerned for the loss of a single guinea, because this guinea is part of a thousand guineas, and because we should be concerned for the loss of the whole sum.”<sup>173</sup>

The word ‘member’ suggests an organic metaphor, but the comparison of society to a bag of guineas destroys it. There are no relations among guineas; hence the whole is not more than the sum of the parts.<sup>174</sup> Smith probably believed that the whole of society *was* more than the sum of its parts, but without being aware of it he expressed a different view. Every man is just one man for himself, but as he lives in society, his relations with other individuals must be regulated. That this is what morality is concerned with is a view that emerges from the thought of both Smith and Kant, even if both sought to go beyond that, grounding morality in Nature or Reason. It is fitting that both Kant and Smith see the principle of justice as basic to society.<sup>175</sup> Their views of conscience fit in this framework. Little rightly observes that conscience, for Kant, “has to do initially and basically with what is owed or not owed to another”, since “[t]he very act of conceiving of another is, for Kant, to conceive of one to whom respect is owed”.<sup>176</sup>

There is thus an egalitarian aspect to Enlightenment ethics and social and political philosophy, which may be considered as good, but there is also a downside. Kittsteiner aptly remarks that, with the new (progress) view of society, the moral conduct of a simple head of the family “bekommt eine welthistorische Dimension”. Hence the strictness of the moral imperative, that now applies equally to everyone: “nicht mehr nur für eine Elite von ‘Wiedergeborenen’, sondern für den universalisierten Begriff des Menschen”.<sup>177</sup> The old ‘coram deo’ has become a ‘coram societate’. Kittsteiner explains how for Kant, Smith, and Rousseau (whom I will discuss shortly), conscience relates to society – and society includes everybody.<sup>178</sup>

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<sup>173</sup> Smith (1982b), 89 (II.ii.3.10).

<sup>174</sup> Cf. Kant (1995b), 375 (‘Metaphysische Anfangsgründe der Rechtslehre II, ‘Das Staatsrecht’, § 45): “Ein Staat (*civitas*) ist die Vereinigung *einer Menge von Menschen* unter Rechtsgesetzen.” (My italics.)

<sup>175</sup> Smith (1982b), 86 (II.ii.3.4), sees beneficence as the “ornament which embellishes, not the foundation which supports the building”, while justice “is the main pillar that upholds the whole edifice”.

<sup>176</sup> Little (1971), 24.

<sup>177</sup> Kittsteiner (1995), 210.

<sup>178</sup> We find a clear expression (and in some respects a radicalization) of this aspect of Enlightenment views of conscience in Ritchie (1891), 141: “[T]he dictates of a man’s

“Die Moralphilosophie der Aufklärung redet nicht mehr in zwei Diskursen, sondern nur noch in einer Sprache. Verstärkung für die Gewissen erhofft sie nicht mehr aus den Gnadenmitteln der Kirche, sondern aus der Struktur dieser neuen Gesellschaft selbst.”<sup>179</sup> Equality had to be paid for by discipline, of which freedom and autonomy were to be the result. The old ‘package deal’ for the common people, rejected by Enlightenment philosophers, consisted of: 1) obedience; 2a) a reward in heaven, or 2b) a punishment in hell (preceded by one in conscience). The philosophers’ ‘new deal’ contained: 1) obedience (with a view to later autonomy); 2) the philosophers’ word that one would probably be rewarded for good behaviour with happiness in this life; 3) the comforting thought, (which, for some philosophers, was indeed merely a thought), that the unfairness of this life would be redressed in the life hereafter. It is questionable whether this constituted a great improvement in the eyes of those for whom the new deal was designed.

What all this meant for the experience, symbolization, and conceptualization of conscience cannot be summarized in a few words; besides, the legacy of Enlightenment thought is highly ambiguous. It might be thought that the faculty view of conscience, the view of conscience as a ‘solid’ entity, corresponds to a stronger and more regular experience of conscience. The very insistence on the need for moral education, which brings with it a strong emphasis on the element of authority, suggests that this can only have been true for an elite; nevertheless, it seems likely that for this group, conscience had become a stronger reality. On the one hand, this would have contributed to the increasingly indicative understanding of conscience. On the other hand, and in combination with this indicative understanding, it would have contributed to the strength of the symbol of conscience. This is a paradox, of course, but it seems probable that the strength of a symbol depends on a certain degree of ‘forgetfulness’ of its symbolic nature. A total surrender to a symbol *implies* such forgetfulness to a certain extent. This is what makes symbols so brittle. Those who remain aware of the symbolic nature of symbols retain a measure of distance between themselves and the symbol, and will not so easily be carried away by it. Those, on the other hand, who forget that a symbol is ‘just’ a symbol, will be able to surrender themselves to it in full, and be carried away by it. Such forgetfulness, however, at the same time undermines the power of the symbol. This would also be the lot of the eighteenth-century concept of

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conscience will on the whole correspond to the better spirit of the community round him, or at least to what he regards as such; and therefore the man who [conscientiously] disobeys a law is acting in the interests of what he conceives to be the future well-being of society.” This is a radicalization of Enlightenment views in the sense that conscience is not just formed by society, and does not merely serve the interests of society, but also has those interests as its *object*.

<sup>179</sup> Ibid., 215.

conscience. Through the forgetfulness of the symbolic nature of conscience inherent in it (which occurred despite the use of metaphors), it contributed to the mythologization of conscience which was a prerequisite for its later demythologization. Through its emphasis on the social nature of conscience (both in origin and in application), it invited deconstruction as a mere product of the human mind, a symbol of subjectivity. Finally, with respect to Kant: his concept of conscience suffered from the same problems twentieth-century functionalist concepts of conscience had to face. One of them is the problem of the subjectivity of conscience, to which the functionalist concept of conscience provides a solution by leaving it aside – hence, the problem remains. All Enlightenment concepts of conscience suffered from this fatal flaw: they leaned too heavily on the requirement not to ask any further questions.

#### 5.4. SOME NOTES ON THE ROMANTIC CONSCIENCE

“The Romantic movement was the protest of the non-specialist against what the Age of Reason had made of human life.”<sup>180</sup> It was a protest against formality, in favour of spontaneity; against common sense, in favour of feeling and intuition, against the explanation of nature, and for an attitude of admiration and wonder in view of its mysteries. As mysticism was a reaction to scholasticism, then, Romanticism was a reaction to the cult of reason. Late medieval religious movements, humanism, and the Reformation renounced the corruption of society, and, more importantly, the church. Romantic thought despised the corruption that pervaded modern society, and sought to revive a purer man, in tune with Nature and his own true self. This, at least, is the opposition between Enlightenment and Romanticism drawn to its extreme. In reality, they are hard to define independent from each other. As always, in reality, the distinctions that worked so well in theory are no more than blurry outlines at best. Feelings, for most intellectuals (a term I use to include both the philosophers and the artists of the period), did not replace reason, but got to work alongside it. “Sensationalist psychology had always insisted that knowledge came from the sense, that the passions were the winds which alone could drive the ship forward, even if their excess might overwhelm it. Conversely, the new cult of sensibility, though it emphasized conflict and apparent disharmony in man and nature, remained true to the belief in a providential order within which all ‘natural’ aspirations could be reconciled.”<sup>181</sup>

Romanticism had consequences for ethics and morality. There was a tendency, as Copleston writes, to ‘ethical subjectivism’; “to depreciate fixed universal moral laws or rules in favour of the free development of the self in

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<sup>180</sup> Cragg (1979), 283.

<sup>181</sup> Hampson (1968), 187.

accordance with values rooted in and corresponding to the individual personality”, “to emphasize the free pursuit by the individual of his own moral ideal (the fulfilment of his own ‘Idea’) rather than obedience to universal laws dictated by the impersonal practical reason”.<sup>182</sup> Thus we find in Diderot’s *Neveu de Rameau* the following dialogue, quoted by Hampson:

“The point is, father, that in the last resort the wise man is subject to no law...’  
‘Don’t speak so loudly.’  
‘Since all laws are subject to exceptions, the wise man must judge for himself when to submit and when to free himself from them.’  
‘I should not be too worried if there were one or two people like you in the town, but if they all thought that way I should go and live somewhere else.’”<sup>183</sup>

The ethical subjectivism Copleston speaks of received what may be its most poignant expression in the work of Emerson (1803-1882) and Thoreau (1817-1862). For them, there was hardly a greater virtue than conscientious non-conformism. Emerson writes:

“Whoso would be a man, must be a nonconformist. He who would gather immortal palms must not be hindered by the name of goodness, but must explore if it be goodness. Nothing is at last sacred but the integrity of your own mind. Absolve you to yourself, and you shall have the suffrage of the world.”<sup>184</sup>

Rousseau, too, in some of his works expresses a moral subjectivist view:

“Whatever I feel to be right is right. Whatever I feel to be wrong is wrong. The conscience is the best of all casuists... Reason deceives us only too often and we have acquired the right to reject it only too well, but conscience never deceives.”<sup>185</sup>

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<sup>182</sup> Copleston (1963), 14.

<sup>183</sup> Hampson (1968), 190.

<sup>184</sup> Emerson (1981), 141. Cf. Thoreau (1993), 3: “A very few, as heroes, patriots, martyrs, reformers in the great sense, and *men*, serve the State with their consciences also, and so necessarily resist it for the most part...”, and 7: “Action from principle, - the perception and the performance of right, - changes things and relations; it is essentially revolutionary, and does not consist wholly with any thing which was. It not only divides states and churches, it divides families; aye, it divides the *individual*, separating the diabolical in him from the divine.”

<sup>185</sup> Rousseau, *Nouvelle Héloïse*, quoted in Hampson (1968), 195; cf. Rousseau (1991b), 286: “The best of all casuists is the conscience; and it is only when one haggles with it that one has recourse to the subtleties of reasoning.”

Rousseau is a perfect example of someone in the twilight zone between Enlightenment and Romanticism. This makes him very interesting. There seems to be a tension between what he writes about conscience in *Nouvelle Héloïse*, *Julie*, and other works on the one hand, and what he says about morality (and *not* about conscience) in *The Social Contract*. Whereas the common Enlightenment view was that ‘self-love and social’ are the same, Rousseau saw that both nature and society are full of conflict.<sup>186</sup> Society, moreover, was corrupt. “Empirical observation of existing society and utilitarian arithmetic provide neither the solution to moral problems nor a sense of obligation sufficient to drive us to discharge unwelcome duties. To know what we should do we must ‘consult the inner light’, *rentrer en soi-même*, seek the innate principle of justice and virtue *au fond de nos âmes*.”<sup>187</sup> Everyone has such an inner light, it “speaks at least as clearly to the peasant as to the philosopher”, Hampson writes.<sup>188</sup> But conscience is the ‘love of the good’, the ‘love of order’, the ‘voice of the soul’ that calls us (back) to our humanity – it is not knowledge.<sup>189</sup> It stands in need of enlightenment.<sup>190</sup> Reason and conscience may combine to oppose convention, the existing social order. But in *The Social Contract* Rousseau says that “*each of us puts his person and all his power in common under the supreme direction of the general will*”.<sup>191</sup> Moreover, he writes that the passage from the natural to the civil state

“produces a very remarkable change in man, by substituting justice for instinct in his conduct, and giving his actions the morality they had formerly lacked. Then only, when the voice of duty takes the place of physical impulses and right of appetite, does man, who so far had only considered himself, find that he is forced to act on different principles, and to consult his reason before listening to his inclinations.”<sup>192</sup>

It seems that the two positions are reconcilable, if we take Rousseau to mean that man, *au fond*, is a social creature, with a natural love of the good, which is a love of order, which order is a *societal* order. Conscience calls man to his

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<sup>186</sup> Hampson (1968), 189-190.

<sup>187</sup> *Ibid.*, 195.

<sup>188</sup> *Idem*.

<sup>189</sup> See Bendik-Keymer, “Rousseauian Conscience”, 20-21. Bendik-Keymer contrasts Rousseau’s position with those of Butler and Smith, of whom he gives interesting discussions. In *Nouvelle Héloïse*, Rousseau writes: “Dieu ne l’a point animé pour rester immobile dans un quiétisme éternel; mais il lui a donné la liberté pour faire le bien, la conscience pour le vouloir, et la raison pour le choisir.” Cf. Hampson (1968), 194.

<sup>190</sup> *Ibid.*, 22. Rousseau is not completely consistent on this point, as is clear from the quotation above, in which conscience is called ‘the best of all casuists’. Cf. Hampson (1968), 184-185, 198.

<sup>191</sup> Rousseau (1991b), 192 (ch. 6 of *The Social Contract*; italics in original).

<sup>192</sup> *Ibid.*, 195 (ch. 8).

humanity – this brings him into society. But when society becomes corrupt, it is also conscience that comes to oppose this society, exactly by calling the individual back to true humanity. When the societal order becomes corrupt, it comes closer to that state of nature in which there is no justice, no right. It is in such a situation that conscience, as the love of order and the good, speaks up, and guided by reason leads man towards a just society, which is what Rousseau envisaged in *The Social Contract*.<sup>193</sup>

More than forty years before Kant, Rousseau wrote his famous work on education, *Emile*. Kant hailed its publication as an event comparable to the French Revolution.<sup>194</sup> *Emile* concerns the question of how to return corrupted man to himself – a new ‘natural’ self, that of the citizen. This requires a ‘healing education’, which Rousseau tries to design in *Emile*.<sup>195</sup> Such an education would raise children to morally autonomous and independent citizens – the same goal Kant later envisaged. But there is an important difference between Rousseau and Kant. Whereas the latter, despite his assertion that in man a seed of the good remains, had a rather pessimistic view of human nature, Rousseau saw man as naturally good. He emphasized the innateness of conscience, although he also recognized that it needed to be informed by reason.<sup>196</sup> Rousseau saw conscience as a matter of intuition and feeling – but it was not to be mistaken for bodily emotions: “Conscience is the voice of the soul; the passions are the voice of the body. Is it surprising that these two languages often are contradictory?”<sup>197</sup> Sometimes he appears to trust conscience more than reason:

“Too often reason deceives us. (...) But conscience never deceives; it is man’s true guide. It is to the soul what instinct is to the body; he who follows conscience obeys nature and does not fear being led astray.”<sup>198</sup>

Rousseau was well aware of those who criticized the idea of an innate conscience. Thus, when he writes:

“There is in the depths of souls, then, an innate principle of justice and virtue according to which, in spite of our own maxims, we judge our actions and those of others as good or bad. It is to this principle that I give the name *conscience*.”

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<sup>193</sup> Given what Rousseau says about the change in man that is the result of the passage from a state of nature to a civil state, there also seems to be a double view of conscience in the sense that for Rousseau there is both a ‘natural’ conscience (‘the love of order’) and a ‘civil’ conscience (‘the voice of duty’).

<sup>194</sup> Rousseau (1991a), 4 (translator’s introduction).

<sup>195</sup> *Ibid.*, 3.

<sup>196</sup> *Ibid.*, 286, 289; 67.

<sup>197</sup> *Ibid.*, 286.

<sup>198</sup> *Ibid.*, 286–287.

- he immediately continues:

“But at this word I hear the clamor of those who are allegedly wise ringing on all sides: errors of childhood, prejudices of education, they all cry in a chorus. Nothing exists in the human mind other than what is introduced by experience, and we judge a thing on no ground other than that of acquired ideas. They go farther. They dare to reject this evident and universal accord of all nations.”<sup>199</sup>

In what follows, Rousseau criticizes Montaigne, imploring him whether he can honestly say that there is any place on earth where “it is a crime to keep one’s faith (...), where the good man is contemptible and the perfidious one honored”. Rousseau is optimistic about human nature: “love of the good and hatred of the bad are as natural as the love of ourselves”; these are natural sentiments, not acquired ideas, and “[t]he acts of the conscience are not judgements but sentiments”.<sup>200</sup> Rousseau’s concept of conscience was egalitarian, for everyone is born with a conscience; moreover, it is the concept of something divine and immortal. It is only because in society men forget the language of nature that so few listen to conscience. In the combination of these elements lies the revolutionary potential of the Rousseauian conscience:

“Conscience, conscience! Divine instinct, immortal and celestial voice (...); infallible judge of good and bad which makes man like unto God (...). (...) Thank heaven, we are delivered from all that terrifying apparatus of philosophy. We can be men without being scholars.”<sup>201</sup>

We can see how Rousseau could influence many different thinkers, with widely divergent views. On the one hand he could inspire “the revolt of the individual against conventional values and restraint of every kind” that reached its climax in the German *Sturm und Drang*.<sup>202</sup> Individualists, almost anarchists, like Emerson and Thoreau picked up on the same aspect of

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<sup>199</sup> Ibid., 289. Cf. 382: “A rule prior to opinion exists for the whole human species.”

<sup>200</sup> Ibid., 290.

<sup>201</sup> Idem. I should note that the Stoicism that is a part of Enlightenment ethics is just as much a part of Rousseau’s. That conscience is a natural sentiment does not mean that people should just follow their inclinations, of whatever kind they be: “Who, then, is the virtuous man? It is he who knows how to conquer his affections; for then he follows his reason and his conscience; he does his duty; he keeps himself in order, and nothing can make him deviate from it. Up to now you were only apparently free. You had only the precarious freedom of a slave to whom nothing has been commanded. Now be really free. Learn to become your own master. Command your heart, Emile, and you will be virtuous.” (Ibid., 444-445.)

<sup>202</sup> Hampson (1968), 201.



Rousseau's thought. On the other hand, Rousseau influenced philosophers like Kant and the German philosophical Romantics. Hegel is often counted as one of them, but it is clear that he was not a Romantic in any more popular sense, and that he is not the clearest exponent of philosophical Romanticism. His view of conscience is Rousseauian; Hegel envisaged that the subjective conscience would (have to) be taken up in the *Sittlichkeit*, so as to become identical with the common good.<sup>203</sup> Rousseau's ethic was romantic in that it was an ethic of self-realization; in this respect, though in a more complicated way perhaps, Hegel's ethic was Rousseauian and romantic.<sup>204</sup> Rousseau also seems to anticipate Heidegger's concept of conscience. For Heidegger, conscience was the voice that calls the individual to an 'Eigentlich' ('authentic') existence; it is a call to live one's own life, instead of having it lived for one by 'das Man'.<sup>205</sup>

It is not hard to see how some form of the Romantic conscience could (later) be an inspiration to conscientious objectors (like Thoreau). The Romantic conscience, the 'inner voice', was a symbol rather than a concept.<sup>206</sup> It expressed a feeling of inspiration, rather than an experience of authority. Like the Enlightenment conscience, it rejected external authority – but the Romantic rejection had the character of a revolt. It distinguished itself from the more traditionally religious conscience in being heroic. This conscience did not make cowards of men, but it empowered them. The Miltonian puritan conscience did the same, but the Romantic conscience was more in touch with the general spirit of the age, which was primarily interested in man's present life and his relations to nature and society – the Romantics were interested in infinity, but spoke of it in naturalistic terms.

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<sup>203</sup> Thus Hegel provided his own solution to the Rousseauian problem: "The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before." (Rousseau [1991b], 191).

<sup>204</sup> Bendik-Keymer, "Rousseauian Conscience", 24; Beiser (2005), 39. Beiser says that "[t]he romantic ethic of self-realization has to be conceived in contrast against its two main alternatives: the utilitarianism of Bentham and Helvetius (...) and the ethics of duty of Kant and Fichte". We have seen, however, that Kant's ethic also includes the element of self-realization. Hegel's position with respect to conscience is of course more nuanced and complicated than sketched above; cf. Beiser (2005), 203-204.

<sup>205</sup> See 1.5.2; for Heidegger's concept of conscience see 7.1.4, Kukla (2002), and Schalow (1998).

<sup>206</sup> Cf. Copleston (1963), 18: "The typical romantic was inclined to conceive the infinite totality aesthetically, as an organic whole with which man felt himself to be one, the means of apprehending this unity being intuition and feeling rather than conceptual thought. For conceptual thought tends to fix and perpetuate defined limits and boundaries, whereas romanticism tends to dissolve limits and boundaries in the infinite flow of Life."

Though I speak of the Romantic conscience, it was in line with the spirit of the age that many Romantics would *scorn* conscience as a product and symptom of outdated and withered religious beliefs. Schiller, in *The Robbers*, writes:

“Conscience! oh yes, a useful scarecrow to frighten sparrows away from cherry-trees; it is something like a fairly written bill of exchange with which your bankrupt merchant staves off the evil day.”<sup>207</sup>

He also speaks of “a conscience after the newest fashion, one that will stretch handsomely as occasion may require”, and of ‘that howling beast, conscience’.<sup>208</sup> But the rejection of the concept, understood in a particular (narrow) way, does not mean that the Romantics did not have their own symbolizations of conscience. These were often ambiguous, but they made explicit what Enlightenment thought tried to obscure: the mythical character of (the authority of) conscience.<sup>209</sup> Where Kant would give ‘conscience’ a prominent place among those characteristics of human beings that set them apart from animals, Goethe avoids the term in his poem *Das Göttliche* – but the gist of it is not very different:

“Edel sei der Mensch, / Hülfreich und gut! / Denn das allein / Unterscheidet ihn / Von allen Wesen, / Die wir kennen.

Heil den unbekanntem / Höhern Wesen, / Die wir ahnen! / Ihnen gleiche der Mensch; / Sein Beispiel lehr uns / Jene glauben.

(...)

Nur allein der Mensch / Vermag das Unmögliche: / Er unterscheidet, / Wählet und richtet (...)

Er allein darf / Den Guten lohnen, / Den Bösen strafen, / Heilen und retten (...)

(...)

Der edle Mensch / Sei hülfreich und gut! / Unermüdet schaff er / Das Nützliche, Rechte, / Sei uns ein Vorbild / Jener geharneten Wesen!”<sup>210</sup>

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<sup>207</sup> Schiller [1778].

<sup>208</sup> Schiller [1778], Act 1, Scene 1; Act 1, Scene 2.

<sup>209</sup> See Begemann (1991).

<sup>210</sup> Goethe (1989). See also the third verse of the poem “Vermächtnis” (297): “Sofort nun wende dich nach innen, / Das Zentrum findest du dadrin, / Woran kein Edler zweifeln mag, / Wirst keine Regel da vermissen: / Denn das selbständige Gewissen / Ist Sonne deinem Sittentag.” (Also quoted in Reiner [1976], 302.)

Conscience is ennobled by the example of a Higher Being, whose existence we suspect, in Kantian terms: imagine.

The Romantic imagination was often stirred by the wonders of nature, and it was surrounded by nature that Rousseau “was most aware of his own individuality and of that inner voice which he believed to be attuned to God.”<sup>211</sup> Hampson notes that this “emotional communion with a deity who was formless but felt, who spoke in terms of feelings of guilt and virtue rather than through awareness of logic and order, set Rousseau apart in France”.<sup>212</sup> But it shows that Romanticism could go hand in hand with a conscience that was traditional in the sense that it could trouble the individual with feelings of guilt. Romanticism, insofar as it can be distinguished from the Enlightenment, both anticipated nineteenth criticism of conscience, and stimulated the mythologization of conscience that invited such criticism, a demythologization. It exposed the feeble foundation of conscience, partly by its own critique, partly by attempts to find a stronger one. Whitehead described Romantic emotion as “essentially the excitement consequent on the transition from the bare facts to the first realisations of the import of their unexplored relationships”.<sup>213</sup> With the nineteenth-century exploration of these relationships – the relations between human nature, society, morality, education, feelings, emotions, reason, (et cetera), and conscience – the excitement would wane, and not much of conscience remain.

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<sup>211</sup> Hampson (1968), 206.

<sup>212</sup> *Ibid.*, 206-207.

<sup>213</sup> Whitehead (1962), 28.

**A Romantic expression of conscience: Wordsworth's *The Prelude, or Growth of a Poet's Mind* (1805)**

In his autobiographical poem *The Prelude, or Growth of a Poet's Mind* (1805) William Wordsworth describes a fearful experience from his childhood. One evening, when he was walking outside alone as he often did, he came upon a small boat tied to a willow tree at the edge of a lake. He stole it; that is, he took it without permission to row unto the moon-lit lake with it.

*"(...) It was an act of stealth  
And troubled pleasure; not without the voice  
Of mountain-echoes did my Boat move on (...)*

Rocks rose up above the 'Cavern of the Willow tree' whence he got the boat, and he fixed his eyes on its 'craggy ridge', which formed the horizon.

*(...) lustily  
I dipp'd my oars into the silent Lake  
(...)  
When from behind that craggy Steep, till then  
The bound of the horizon, a huge Cliff,  
As if with voluntary power instinct,  
Uprear'd its head. I struck, and struck again,  
And, growing still in stature, the huge Cliff  
Rose up between me and the stars, and still,  
With measur'd motion, like a living thing,  
Strode after me. With trembling hands I turn'd,  
And through the silent water stole my way  
Back to the Cavern of the Willow tree."*

The experience described here (in retrospect, obviously) is commonly seen as an expression of conscience. Several passages in the context of this part of *The Prelude* add plausibility to such an interpretation. Nature is presented as the source of conscience. The experience may literally be phantastic, illusory, hallucinatory – and yet it is an experience of conscience, and this experience is *about* something: the hallucination shows itself as a way of experiencing moral normativity. Wordsworth's example may serve here as a reminder of the fact that conscience is primarily a matter of experience and its symbolic expression – an expression that need not include the term 'conscience'.

William Wordsworth, *The Prelude, or Growth of a Poet's Mind*, (Text of 1805), Oxford University Press, London, 1969, 11-12.



## 6. Between symbol and doctrine (5): the second wave of criticism – the nineteenth century

“With respect to blushing from strictly moral causes, we meet with the same fundamental principle as before, namely, regard for the opinion of others. It is not the conscience which raises a blush, for a man may sincerely regret some slight fault committed in solitude, or he may suffer the deepest remorse for an undetected crime, but he will not blush. (...) [A] man may be convinced that God witnesses all his actions, and he may feel deeply conscious of some fault and pray for forgiveness; but this will not, as a lady who is a great blusher believes, ever excite a blush. The explanation of this difference between the knowledge by God and man of our actions lies, I presume, in man's disapprobation of immoral conduct being somewhat akin in nature to his depreciation of our personal appearance, so that through association both lead to similar results; whereas the disapprobation of God brings up no such association.”

CHARLES DARWIN, *The Expression of the Emotions in Man and Animals*, John Murray, London, 1872, 333-334.

“[T]he season of *Fiction* is now over...”

JEREMY BENTHAM, *The Theory of Fictions*, 122, in C. K. Ogden, *Bentham's Theory of Fictions*, Routledge, London, 2000.

### 6.1. PREPARATIONS: FROM ‘NATURE’ TO ‘NATURE’

Enlightenment philosophers (still) tended to think of nature as Nature; that is, with reverence. It was a beautiful, harmonious system, that provided for everything. Its wisdom was sometimes beyond man's intelligence, but that its arrangements were wise was beyond question. Adam Smith notes that people tend to judge actions by their consequences, rather than the intentions behind them. “That the world judges by the event, and not by the design, has been in all ages the complaint, and is the great discouragement of virtue. (...) Nature, however, when she implanted the seeds of this irregularity in the human breast, seems, as upon all other occasions, to have intended the happiness and perfection of the species.”<sup>1</sup> Smith also tells us that “to raise and support [the immense fabric of human society] seems in this world (...) to have been the peculiar and darling care of Nature”.<sup>2</sup> But another image of nature also emerges from his work – or at least another side to this one. He writes that

“self-preservation, and the propagation of the species, are the great ends which Nature seems to have proposed in the formation of all animals. (...)”

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<sup>1</sup> Smith (1982b), 104-105 (II.iii.3.1-2).

<sup>2</sup> *Ibid.*, 86 (II.ii.3.4).

[I]t has not been entrusted to the slow and uncertain determinations of our reason, to find out the proper means of bringing them about. Nature has directed us to the greater part of these by original and immediate instincts. Hunger, thirst, the passion which unites the two sexes, the love of pleasure, and the dread of pain, prompt us to apply those means for their own sakes, and without any consideration of their tendency to those beneficent ends which the great Director of nature intended to produce by them.”<sup>3</sup>

The implications are ambiguous. Nature always has man’s happiness in view; it has a Director (also called the Author of nature), who intends the same; yet there is also a darker side to nature – not everything seems, at first sight, to be arranged in a desirable way, not everything is harmonious. The most basic drives and instincts, that in themselves (for Smith) are not worthy of esteem, are the means Nature uses to reach more noble ends.<sup>4</sup>

But for all the ambiguity, there was a clear trend towards an understanding of ‘nature’ that precluded its being written with a capital ‘N’. Neither Hobbes nor Locke would have agreed that ‘self-love and social’ were the same. They emphasized the violence in nature, the violence that *was* nature, which left people with no other option than to live in society, governed by a sovereign ruler. It is nature in this sense, a name for the blind collision of forces – as well as, on another level, for a closed, law-governed, mechanical system – that increasingly attracts the philosopher’s attention. This is equally true for *human* nature. With Hobbes and Locke, all the

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<sup>3</sup> Ibid., 77-78 (II.i.5.10).

<sup>4</sup> The idea of ‘natural instincts’ was far from new. Marsilio Ficino (1433-1499) saw religion as a ‘natural instinct’, that all men share, and that had inspired Egyptian priests, Hebrew prophets and Platonic philosophers alike (Dupré [1993], 200-201). Robert Greene traces the term to Jean Gerson (1363-1429) and Christopher St. German (1460-1541), and states that the popularity of Calvin’s *Institutes* contributed greatly to the term becoming “part of the vocabulary in which man’s natural knowledge of God was discussed” (Greene [1991a], 215). The ‘natural instinct’ terminology was adopted by, for example, Edward Herbert (1583-1648) and Francis Bacon (1561-1626). The latter speaks of an ‘inward instinct’. Greene describes Herbert’s concept of ‘natural instinct’ as “the immediate instrument or manifestation of universal divine providence intending and inclining the world and all that it contains towards its own preservation and the full realization of its own nature” (Greene [1991a], 216-217). Rousseau, to conclude, in one place refers to conscience not as a ‘natural instinct’, but as an ‘instinct divin’, a divine instinct (see chapter 5). With these authors, the notion of a ‘natural instinct’ hovers somewhere in between the old idea of ‘synderesis’ and the idea of a blind impulse. In Herbert’s case, the ideas of self-preservation and self-realization go hand in hand, as many eighteenth-century philosophers would in fact agree. Both self-preservation and self-realization require ‘sociality’, for man is a social being, a ‘zoon politikon’. If self-preservation and self-realization both tend in that direction, is it strange that Alexander Pope (1688-1744) wrote that ‘self love and social’ would be the same? (See Porter [2001], 175-176.)

ingredients were there for a new recipe for man – a recipe that did not include a divine part of human nature like the spark of conscience. Of course they did not move that quickly. Man still had possession of that noble faculty of Reason, even if John Doe did not inspire much confidence in the use to which that faculty was put. “The proper study of mankind is man,” wrote Alexander Pope, and the new study of man was interested in psychology, rather than pneumatology; it studied the faculties of the psyche, rather than the immortal soul.<sup>5</sup> Just as we can dissect the body and analyze its parts, so, the adherents to the science of man thought, we ought to be able to dissect and analyze the mind. Hence Roy Porter called his chapter on the British Enlightenment study of man “Anatomizing Human Nature”. He quotes Thomas Reid, who said that “it must be by an anatomy of the mind that we can discover its powers and principles”.<sup>6</sup>

David Hume (1711-1776) was a key figure in this movement. The subtitle of his *A Treatise of Human Nature* was *Being an Attempt to Introduce the Experimental Method of Reasoning into Moral Subjects* – an echo, so Porter suggests, of the following remark by Sir Isaac Newton (1643-1727), from the final pages of his *Opticks*: “And if natural Philosophy in all its Parts, by pursuing this Method, shall at length be perfected, the Bounds of Moral Philosophy will also be enlarged.”<sup>7</sup> Hume conceived of nature as the unknowable reality that gives rise (in an unknowable way) to all our experiences. He simply assumed, as a matter of common sense, that there was such a nature, a ‘real order of existence’, in Willey’s words, and he assumed that our ideas could be correct representations of nature. The distinction between correct and false ideas can only be made on the basis of the ‘vivacity, or firmness, or steadiness’ of correct ideas; fictitious ideas *feel* different.<sup>8</sup> (This, by the way, is a far cry from Hobbes’ and Locke’s views on subjective certainty.) As sensible men agree about reality, ‘nature’ can be said to be “the mental habit of *all* men – except perhaps lunatics, lovers, and poets”.<sup>9</sup> There is nothing exalted, then, about what Hume calls ‘nature’. He notes that ‘nature’ is a word “than which there is none more ambiguous and equivocal”.<sup>10</sup> It can be meant as the opposite of the miraculous, in which case “not only the distinction betwixt vice and virtue is natural, but also every event, which has ever happen’d in the world, *excepting those miracles, on*

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<sup>5</sup> Ibid., 156, 170.

<sup>6</sup> Ibid., 163; quoted from Gladys Bryson, *Man and Society: The Scottish Enquiry of the Eighteenth Century*, Kelley, New York, 1968, 131.

<sup>7</sup> Porter (2001), 161; quoted from Sir Isaac Newton, *Opticks, or A Treatise of the Reflexions, Refractions, Inflections & Colours of Light*, (Smith and Walford, London, 1704), William and John Innys, London, 1721, Query 31, 381. Cf. Hume (2000), I(ntroduction) 15; cf. also Willey (1968), 111-112.

<sup>8</sup> Willey (1968), 114-115; Hume (2000), 68 (1.3.7).

<sup>9</sup> Willey (1968), 118.

<sup>10</sup> Hume (2000), 304 (3.1.2).



*which our religion is founded*'. 'Nature' may also be the opposite of 'rare and unusual', and Hume states that

"[w]e may only affirm on this head, that if ever there was any thing, which cou'd be call'd natural in this sense, the sentiments of morality certainly may; since there never was any nation of the world, nor any single person in any nation, who was utterly depriv'd of them, and who never, in any instance, show'd the least approbation or dislike of manners. These sentiments are so rooted in our constitution and temper, that without entirely confounding the human mind by disease or madness, 'tis impossible to extirpate and destroy them."<sup>11</sup>

Finally, 'nature' may be opposed to 'artifice', "and in that sense it may be disputed, whether the notions of virtue are natural or not".<sup>12</sup> Justice is an example of an artificial virtue, as it produces "pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessities of mankind".<sup>13</sup> In the above quotation about the 'naturalness' of the moral sentiments, Hume appears to be of one mind with the casuists discussed in chapter 3, as well as with Butler, Shaftesbury and Hutcheson. The last sentence recalls ancient formulas regarding 'synderesis', the 'spark of conscience which was not even extinguished in the breast of Cain'. But Hume replaces both 'synderesis' and conscience with moral sentiments, with feelings of approbation and disapprobation. Hume bases morality on 'nature' in a new way, anticipated by Hobbes and Locke, for the former of whom "*Good*, and *Evill*, are names that signifie our Appetites, and Aversions; which in different tempers, customes, and doctrines of men, are different".<sup>14</sup> In a discussion "Of the Dignity or Meanness of Human Nature", Hume notes that in order to acquire knowledge of human nature, man is often compared to animals, or one man to another. The only useful comparison, however, is that between "the different motives or actuating principles of human nature, in order to regulate our judgment concerning it".<sup>15</sup> For, "[w]ere our selfish and vicious principles so much predominant above our social and virtuous, as is asserted by some philosophers, we ought undoubtedly to entertain a

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<sup>11</sup> *Ibid.*, 305 (3.1.2). Willey (1968, 122) notes that Hume "is aware (...) that different ages and races have approved different things, but for his purpose it is sufficient to make a catalogue of the qualities approved and condemned by his own age and social group. The moral judgments of this group, he evidently feels, are sufficiently representative to be taken as those of average humanity." In Hume, then, we find that same remarkable feature of parochialism parading as universalism that appears to have been so widespread in his time.

<sup>12</sup> *Idem.*

<sup>13</sup> *Ibid.*, 307 (3.2.1).

<sup>14</sup> Hobbes (2000), 110 (ch. 15).

<sup>15</sup> Hume (1987), Essay XI.

contemptible notion of human nature.”<sup>16</sup> Human nature is not defined by anything ‘metaphysical’, a divine spark, a mysterious moral faculty, but by man’s motives for action.<sup>17</sup> Yet, and this is an important difference with Locke, “natural affection, love of virtue, resentment, and all the other passions, arise immediately from nature” – Locke’s rejection of innate ideas went too far for Hume.<sup>18</sup>

But what about conscience? Hume uses the term but four times in his *Treatise*, and on one of these occasions in an hypothesis that he refutes because of the implications of ‘conscience’ in this hypothesis.<sup>19</sup> The most significant passage is that in which he says:

“Reason is wholly inactive, and can never be the source of so active a principle as conscience, or a sense of morals.”<sup>20</sup>

Hume identifies ‘conscience’ with the ‘sense of morals’ (the moral sense), a concept which he prefers, probably because ‘conscience’ has metaphysical and religious connotations which he wishes to avoid. Hume advocates a ‘moral sense’ theory. Morality is not a matter of the discovery of moral truth, and living up to that truth, for it is not a characteristic of the relations between objects. Hence Hume’s famous remark about the transition from ‘is’ to ‘ought’ in the propositions put forward by philosophers.<sup>21</sup> Moral distinctions are not discovered by reason, but result from a moral sense, from a feeling or sentiment.

“Vice and virtue, therefore, may be compar’d to sounds, colours, heat and cold, which, according to modern philosophy, are not qualities in objects, but perceptions in the mind...”<sup>22</sup>

Hume sees as the ‘most probable hypothesis’ regarding the origin of the distinction between vice and virtue, the view that “from a primary constitution of nature certain characters and passions, by the very view and

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<sup>16</sup> *Idem*.

<sup>17</sup> Hume takes issue with Hobbes and his followers here, and refutes the idea that all man’s actions are purely the result of self-love.

<sup>18</sup> Hume (2000), 408 (*Abstract of A Treatise of Human Nature*, § 6).

<sup>19</sup> The hypothesis was that “men may be bound by *conscience* to submit to a tyrannical government against their own and the public interest” (Hume [2000], 353 [3.2.9]). The other places where ‘conscience’ is mentioned are 202 (2.1.10), 295 (3.1.1), and 349 (3.2.8).

<sup>20</sup> Hume (2000), 295 (3.1.1).

<sup>21</sup> *Ibid.*, 302 (3.1.2).

<sup>22</sup> *Ibid.*, 301 (3.1.1). The sentence continues: “And this discovery in morals, like that other in physics, is to be regarded as a considerable advancement of the speculative sciences; tho’, like that too, it has little or no influence on practice.”

contemplation, produce a pain, and others in like manner excite a pleasure”.<sup>23</sup> “To have the sense of virtue, is nothing but to *feel* a satisfaction of a particular kind from the contemplation of a character.” And this “very *feeling* constitutes our praise or admiration”.<sup>24</sup> Now, not every ‘pain’ (or ‘uneasiness’) or ‘pleasure’ that we feel when contemplating someone’s character or actions is of a moral nature. We may feel ‘unease’ because this person or action has a relation to our interests. “’Tis only when a character is consider’d in general, without reference to our particular interest, that it causes such a feeling or sentiment, as denominates it morally good or evil.”<sup>25</sup> This idea of impartiality, we have seen, was an important (if not *the* most important) feature of Adam Smith’s theory. Hume’s idea of the moral sense leads him to postulate its *infallibility*, a feature of conscience in many traditional concepts. The moral sense is infallible, simply because “[t]he distinction of moral good and evil is founded on the pleasure or pain, which results from the view of any sentiment, or character; and (...) that pleasure or pain cannot be unknown to the person who feels it”.<sup>26</sup> The pain or pleasure need not be *ours*; we may contemplate the influence of a character on *others*, and by *sympathy*, a keystone of Hume’s moral theory, feel the pain or pleasure that they would feel.

“[S]elf-interest is the original motive to the *establishment* of justice: But a *sympathy* with *public* interest is the source of the *moral* approbation, which attends that virtue. This latter principle of sympathy is too weak to controul our passions; but has sufficient force to influence our taste, and give us the sentiments of approbation or blame.”<sup>27</sup>

Sympathy is a natural part of man’s constitution. It “produces, in many instances, our sentiments of morals, as well as those of beauty”.<sup>28</sup> As, in Hume’s view, the approbation or disapprobation which results from it depends on the good (the pain or pleasure) to which the contemplated character or motive for action gives rise, his ethics can be called *utilitarian*. But they are not consequentialist in the sense that the praise or blame attaches to the consequences of actions; it is the character and motives that are the objects of moral judgement, and they are judged in light of their utility, their contribution to happiness, to the social good. In this emphasis on *motives*, on *intentions*, lies both a great resemblance with Kant’s theory, and a great difference between Kant and Hume. For Kant, too, moral worth depends on intentions, not consequences. But whereas for Kant, intended

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<sup>23</sup> Ibid., 193-194 (2.1.7).

<sup>24</sup> Ibid., 303 (3.1.2).

<sup>25</sup> Idem. See also 372 (3.3.1).

<sup>26</sup> Ibid., 350 (3.2.8).

<sup>27</sup> Ibid., 320-321 (3.2.2).

<sup>28</sup> Ibid., 369 (3.3.1).

consequences are irrelevant, because moral worth solely depends on whether something was done from a sense of duty or not, and *for the sake of duty*, the opposite holds true for Hume:

“[I]t may be established as an undoubted maxim, *that no action can be virtuous, or morally good, unless there be in human nature some motive to produce it, distinct from the sense of its morality.*”<sup>29</sup>

For Hume, moral actions should flow from the nature of persons; to do good purely from a sense of duty is a poor, if necessary, alternative.<sup>30</sup> His aesthetic theory of morals, with its emphasis on feelings, discards or transforms many traditional elements of concepts of conscience. The sense of duty and obligation is inevitably weakened. Sometimes, traditional views seep through:

“And who can think any advantages of fortune a sufficient compensation for the least breach of the *social* virtues, when he considers, that not only his character with regard to others, but also his peace and inward satisfaction entirely depend upon his strict observance of them; and that a mind will never be able to bear its own survey, that has been wanting in its part to mankind and society?”<sup>31</sup>

What is traditional here is the introspection; what is modern is that morality is purely social – conscience monitors one’s contribution to the happiness of ‘mankind and society’. Generally, we do not find the traditional element of introspection in Hume’s theory. Willey rightly remarks that “with Hume, we hear little about *self*-approval, or of the morality of living for some principle in the teeth of society’s disapproval. (...) Your virtue may be described as ‘my approval of you’; my virtue is ‘your approval of me’.”<sup>32</sup> The essence of human nature was no longer seen to lie in Reason, but rather in “instincts, emotions, and ‘sensibilities’”.<sup>33</sup> “Shaftesbury, Hutcheson, and Hume had prepared the way by proclaiming that our moral judgments, like our aesthetic judgments, are not the offspring of Reason at all; but proceed from an inner

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<sup>29</sup> Ibid., 308 (3.2.1).

<sup>30</sup> Rather than fight his own nature, as many of Hume’s contemporaries urged, man, Hume thought, ought to accept his natural feelings and put them to good use in society. “Conduct was thus programmatically naturalized. Society had developed so as to meet certain basic needs – for security, self-esteem, and so forth. The science of human nature confirmed that these pragmatic actions were grounded in psychological realities, and hence were not to be disavowed lightly in the name of any specious transcendental value system, abstract metaphysics or utopian vision.” (Porter [2001], 179).

<sup>31</sup> Hume (2000), 395 (3.3.6).

<sup>32</sup> Willey (1968), 123.

<sup>33</sup> Ibid., 108.

sentiment or feeling which is unanalysable.”<sup>34</sup> The *theoretical* basis of conscience – of the authority of conscience – was weakened, but that would not have worried Hume very much.

## 6.2. JEREMY BENTHAM

If Hume was good at debunking traditionally esteemed notions, Jeremy Bentham (1748-1832) was a star in this game. His *The Theory of Fictions* (1789) is one great attempt to separate the real from the fictitious, and the useful fictions from the harmful ones. If there ever was a mind less open to symbolism and more addicted to the idea of tangible reality and its indication by proper language, I would not like to meet him. Bentham seems to lack the imagination (which is, for him, a ‘fictitious entity’) to conceive of any other mode of communication than that of the indication of real, existent objects. Bentham believes – incorrectly, as we have seen in chapter 2 – that all words can be traced back to words with an exclusively material referent.<sup>35</sup> As words were ‘invented’ to designate real entities, and people associated real entities with words, they naturally came to ‘attribute reality to every object thus designated’.<sup>36</sup> Thus, the names of fictitious entities came into being.

“Faculties, powers of the mind, dispositions: all these are unreal; all these are but so many fictitious entities.”<sup>37</sup>

And there are many, many other examples: ‘physical fictitious entities’ (‘substance’, ‘quantity’, ‘quality’, ‘relation’, ‘places’, ‘time’, et cetera), ‘political and quasi-political fictitious entities’ (‘obligation’, ‘right’, ‘power’, ‘privilege’, ‘command’, ‘prohibition’, ‘judgment’, and so on), and many others. All these must ultimately relate to something material:

“Every fictitious entity bears some relation to some real entity, and can no otherwise be understood than in so far as that relation is perceived – a conception of that relation is obtained.”<sup>38</sup>

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<sup>34</sup> Ibid., 108-109. Cf. Thomas Reid: “Our moral judgments are not like those we form in speculative matters, dry and unaffecting, but, from their nature, are necessarily accompanied with affections and feelings (...)”, and “Moral conduct is the business of every man; and therefore the knowledge of it ought to be within the reach of all. (...) But the bulk of mankind cannot follow long trains of reasoning. (...) Conscience commands and forbids with more authority (...) without the labour of reasoning. Its voice is heard by every man...”; Reid (1999), essay III, chapter VII: “Of Moral Approbation and Disapprobation”, 592, 594.

<sup>35</sup> Bentham (2000), 63.

<sup>36</sup> Ibid., 17.

<sup>37</sup> Ibid., 10.

<sup>38</sup> Ibid., 12.

Hence, the ‘political and quasi-political fictitious entities’ just mentioned find their sense (in more than one meaning of the word) in pleasure and pain ‘– but principally pain’.<sup>39</sup>

For my present purpose, the moral words are the most interesting.<sup>40</sup> In *Anarchical Fallacies*, in which, in response to the French *Declaration of Rights*, Bentham – in true Hobbesian and Lockean fashion – berates the abuse of words and its dangers, he famously criticizes the idea of natural rights:

“That which has no existence cannot be destroyed -- that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, -- nonsense upon stilts.”<sup>41</sup>

Similarly, in *The Theory of Fictions*, he notes that “[t]he word *right* is the name of a fictitious entity”, but he adds that it is “one of those objects the existence of which is feigned for the purpose of discourse – by a fiction so necessary that without it human discourse could not be carried on”, and also adds in a footnote that “[t]hough fictitious, the language cannot be termed *deceptious* – in intention at least, whatsoever in some cases may without intention be the result”.<sup>42</sup> The afterthought shows his concern that fictitious language might lead to dangerous confusions. With respect to natural, moral, and political right, Bentham observes that only in the latter case “the word *right* has any determinate and intelligible meaning”; only in this case “the existence of a certain matter of fact is asserted”, this being “a disposition, on the part of those by whom the powers of government are exercised, to cause him to possess, and so far as depends upon them to have the faculty of enjoying, the benefit to which he has the right”.<sup>43</sup> With respect to duties, rights, and obligations, he tells his readers that, when he refers to these as fictitious entities, he wants “it not for a moment to be supposed that, in either instance, the reality of the object is meant to be denied in any sense in which in ordinary language the reality of it is assumed”. But by means of a rhetorical question he makes clear that they would indeed not exist if there

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<sup>39</sup> *Ibid.*, 38.

<sup>40</sup> Bentham distinguished between five types of ‘ethical fictitious entities’; *ibid.*, 156.

<sup>41</sup> Bentham (1843), Art. 2.

<sup>42</sup> Bentham (2000), 118. He also remarks (on page 73) that “at the very first step that can be taken in the field of language, fiction, in the simplest, or almost the simplest, case in which language can be employed, becomes a necessary resource”. If that is indeed the case, one may wonder whether it is not Bentham himself who abuses language, stretching the meaning of the words ‘fictitious’ and ‘fiction’ far beyond their ordinary bounds.

<sup>43</sup> *Ibid.*, 119.

were no such things as the sensations of pain and pleasure – in which he shows his indebtedness to Hume.<sup>44</sup>

Bentham always wishes to ‘return’ to a tangible reality as the basis and ultimate meaning of words. Thus, when I say that someone ‘should’, or ‘ought to’ do something, ‘nothing more do I express than my satisfaction at the idea of him doing this.’<sup>45</sup> There are two ways to trace a notion back to its ‘real’ roots. By means of *paraphrasis* we find the roots of the *idea*, and by *archetypation* we find the roots of the *word*, that is: the etymology. “Thus, in the case of *obligation*, (...) the root of the *idea* is in the ideas of pain and pleasure. But the root of the word (...) lies in a material image, employed as an *archetype* or *emblem*: viz. the image of a *cord*, or any other *tie* or *band* (from the Latin *ligo*, to bind) by which the object in question is *bound* or fastened to any other, the person in question bound to a certain course of practice.”<sup>46</sup>

Bentham could have followed the same procedure with ‘conscience’, as Hobbes in fact did, but the word is not mentioned in *The Theory of Fictions*. In *Deontology*, however, he calls conscience ‘a thing of fictitious existence, supposed to occupy a seat in the mind’.<sup>47</sup> Thus, Bentham illustrates exactly that loss of meaning which occurs when a relation of symbolization is mistaken for a relation of indication; that is, when a symbol is taken to be a sign. Smith’s ‘man within’ is literalized to the point of absurdity. This is what the faculty view of conscience – what the gradual solidification of conscience – led up to: the inability to conceive of the term as being anything other than indicative, and the subsequent failure to find any existent object indicated. Doctrinalization thus led to the rejection of conscience as a meaningful notion. Using the methods of paraphrasis and archetypation, Bentham might have been able to ‘rescue’ the word itself – relating it to ‘satisfaction’, perhaps, in the same way he did with the moral ‘should’ and ‘ought’ – but by my knowledge he never made such an attempt.

Of course there was another term around to designate the same ‘thing’ as ‘conscience’; namely, the ‘moral sense’. In chapter 2 of his *Introduction to the Principles of Morals and Legislation*, which deals with ‘principles adverse to that of utility’, Bentham devotes a long footnote to this and equivalent fictions – to which category, of course, it belongs. The paragraph to which the footnote is attached states the following:

“The various systems that have been formed concerning the standard of right may all be reduced to the principle of sympathy and antipathy. One account may serve to for all of them. They consist all of them in so many contrivances for avoiding the obligation of appealing to any external standard, and for prevailing upon the reader to accept of the author’s

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<sup>44</sup> Ibid., 138.

<sup>45</sup> Ibid., 120.

<sup>46</sup> Ibid., 138. For ‘obligation’, see also 88-91.

<sup>47</sup> Jeremy Bentham, *Deontology*, I, 137, quoted in: Smith (1933), 108.

sentiment or opinion as a reason for itself. The phrases different, but the principle the same.”<sup>48</sup>

Bentham subscribes to the Hobbesian and Lockean view that what is often called ‘conscience’ – or, in this case, ‘moral sense’ – is in fact nothing but a person’s private opinion or feeling. Hence, the word ‘moral sense’, as what it is usually intended to mean, is nonsensical. People have tried to hide the true nature of their private moral judgements by a host of invented phrases:

- “1. One man says, he has a thing made on purpose to tell him what is right and what is wrong; and that it is called a *moral sense*: and then he goes to work at his ease, and says, such a thing is right, and such a thing is wrong—why? ‘because my moral sense tells me it is’.
2. Another man comes and alters the phrase: leaving out *moral*, and putting in *common*, in the room of it. He then tells you, that his common sense teaches him what is right and wrong, as surely as the other’s moral sense did: meaning by common sense, a sense of some kind or other, which he says, is possessed by all mankind: the sense of those, whose sense is not the same as the author’s, being struck out of the account as not worth taking.”<sup>49</sup>

Bentham then observes that ‘common sense’ serves its purpose as a cloaking device better than ‘moral sense’,

“for a moral sense being a new thing, a man may feel about him a good while without being able to find it out: but common sense is as old as the creation, and there is no man but would be ashamed to be thought not to have as much of it as his neighbours.”<sup>50</sup>

He asserts the same thing about ‘moral sense’, then, that Hobbes claimed for ‘conscience’ in its private sense. The difference is that ‘moral sense’ was indeed a relatively new term. Bentham chose to see it not as a new word for something that used to be expressed in other terms, but as a new word *for a new thing*. That the indicative understanding of the term is followed by an attempt to find the existent object it indicates is clear from the words: ‘a man may feel about him (...) without being able to find it out’. Bentham then goes on to enumerate alternative fictions: ‘understanding’ (used in a certain way), ‘an eternal and immutable Rule of Right’, the idea of the ‘Fitness of Things’, the ‘Law of Nature’, and as equivalents thereof ‘Law of Reason’, ‘Right Reason’, ‘Natural Justice’, ‘Natural Equity’, ‘Good Order’. He finds the last three ‘much more tolerable than the others’,

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<sup>48</sup> Bentham (1907), ch. 2, XIV.

<sup>49</sup> Ibid., note to ch. 2, XIV.

<sup>50</sup> Idem.



“because they do not very explicitly claim to be any thing more than phrases: they insist but feebly upon the being looked upon as so many positive standards of themselves, and seem content to be taken, upon occasion, for phrases expressive of the conformity of the thing in question to the proper standard, whatever that may be.”<sup>51</sup>

But he makes sure that his readers do not misunderstand him:

“On most occasions, however, it will be better to say *utility*: *utility* is clearer, as referring more explicitly to pain and pleasure.”<sup>52</sup>

He does not mean to say that all moral sentiments must be derived from ‘a view of utility’ – he ‘does not know’, and ‘does not care’; what he means to say is that the only criterion of *justification* is that of utility: the usefulness, the conduciveness to the happiness of society, of an action. His theory of language and his utilitarian ethics combine to refute the notion of ‘moral sense’.

There is a further motive behind the attack on conscience. I already pointed out that Bentham’s interest in the ‘proper’ use of language was not merely academic; as with Hobbes and Locke, it had its origin in a concern regarding the dangers of the abuse of language. In Bentham’s case, this concern was fuelled by the situation in France and the revolutionary mood throughout Europe, including Britain. He perceived that

“[t]he mischief common to all [the aforementioned] ways of thinking and arguing (which, in truth, as we have seen, are but one and the same method, couched in different forms of words) [often serves] as a cloke, and pretense, and aliment, to despotism: if not a despotism in practice, a despotism however in disposition: which is but too apt, when pretense and power offer, to show itself in practice.”<sup>53</sup>

For if a man is an infallible judge of right and wrong in private matters, why would he not be the same in public matters? His distrust of many moral words, including ‘conscience’ and ‘moral sense’, was related to a fear of religious fanaticism. In a later chapter of *An Introduction to the Principles of Morals and Legislation*, Bentham discussed the power of religion as motive for action, and added the following footnote to his argument:

“If a man happen to take it into his head to assassinate with his own hands, or with the sword of justice, those whom he calls heretics, that is, people who think, or perhaps only speak, differently upon a subject which neither party understands, he will be as much inclined to do this at one time as at

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<sup>51</sup> Idem.

<sup>52</sup> Idem.

<sup>53</sup> Idem.

another. Fanaticism never sleeps: it is never glutted: it is never stopped by philanthropy; for it makes a merit of trampling on philanthropy: it is never stopped by conscience; for it has pressed conscience into its service. Avarice, lust, and vengeance, have piety, benevolence, honour; fanaticism has nothing to oppose it.”<sup>54</sup>

Here, he does use the term conscience, but immediately gives a reason not to trust it: it is in the service of religious fanaticism. In *The Theory of Fictions* he expresses his mistrust of the intentions of people who speak readily of ‘Justice’, ‘Right Reason’, and the ‘Law of Nature’, “all which are so many ways of intimating that a man is firmly persuaded of the truth of this or that moral proposition, though he either thinks he *need not*, or finds he *can’t*, tell *why*”:

“Men were too obviously and too generally interested in the observance of these rules to entertain any doubts concerning the force of any arguments they saw employed in their support. It is an old observation, how Interest smooths the road to Faith.”<sup>55</sup>

It is remarkable that ‘conscience’ is not mentioned here, the appeal to which until this day is considered by certain people as a knockdown argument. And there is a particular irony to Bentham’s remark, if we consider that his thought, and liberal thought in general, can be seen as bearing a great part of the responsibility for the shift from ‘conscience’ to ‘interest’ identified by Sheldon Wolin.<sup>56</sup> He writes: “The decline of the individual conscience in liberal theory ushered in a new social world where men, no longer able to communicate on the basis of a common interior life, were reduced to knowing each other solely from the outside; that is, on the basis of socially acquired responses and values.” In Locke’s view of the human condition, “[m]an becomes conscious of his fellows only when he and they collide”. “It was this realization which later caused Bentham to declare that it was futile ‘to dive into the unfathomable regions of motives, which cannot be known.’ All that men could know for certain was the consequences of an individual’s actions, never his reasons for doing them.”<sup>57</sup> Wolin maintains that the “basic assertion, that each was the best judge of his own interests (...) rested squarely on the belief that no individual could truly

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<sup>54</sup> Ibid., ch. 12, § 2, XXXIV.

<sup>55</sup> Bentham (2000), *The Theory of Fictions*, 123.

<sup>56</sup> Wolin (2004). This shift is discussed in more detail in part II. (In *The Art of Packing* Bentham once speaks of ‘interest, in the shape of reputation and conscience’; Bentham [1821], part IV, ch. III, § 7; ‘packing’ is the selection of a jury [in a way that is favourable to one’s case].)

<sup>57</sup> Ibid., 305.

understand another”.<sup>58</sup> In *The Theory of Fictions* Bentham says: “To no other man’s is the *mind* of any man immediately present. (...) Yonder stands a certain portion of matter.”<sup>59</sup> A behaviourist *avant la lettre*, Bentham explains that it is through action involving, and reference to, real objects that we find out the meaning of ‘mind’.

Bentham, then, was not interested in conscience. “And Bentham also made it abundantly clear that men no longer had any real incentive to that self-knowledge which leads to the examination of the inner life.

But by interest he is at the same time diverted from any close examination into the springs by which his own conduct is determined. From such knowledge he has not, in any ordinary shape, any thing to gain, - he finds not in it any source of enjoyment.

At the same time, since every act of will and of the intellect was reducible to interest, there remained nothing to examine internally: man’s soul had been factored out.”<sup>60</sup> It is in the individual’s interest to abide by society’s standards, “the generalized expression of the wants, values, and expectations held by most of the members”.<sup>61</sup> This set of values is to be internalized, so that the conscience of the individual mirrors the values of society, rather than enabling the individual to take a critical stance towards those values. Thus, Bentham takes Adam Smith an important step further. Smith’s ‘impartial spectator’ implied the possibility of conflict with the real spectator. For Bentham, there is no such distinction. Moreover, the individual is not merely cautioned to abide by social norms, but also, as Wolin points out, advised in how to *use* them: “‘It is every man’s *interest* to stand well in the affections of other men’ so as to amass a ‘good-will fund’ rather than an ‘ill-will fund.’”<sup>62</sup> Bentham envisaged a society in which penal law would decrease in importance in direct proportion to the increasing influence of “the ‘moral law’ enforced by public opinion”.<sup>63</sup> The ‘moral sanction’ would ‘grow stronger and stronger’, through the power of public opinion. Everyone would be the check on everyone else’s actions:

“A whole kingdom, the great globe itself, will become a gymnasium, in which every man exercises himself before the eyes of every other man. Every gesture, every turn of limb or feature, in those whose motions have a

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<sup>58</sup> Idem. Wolin refers to Jeremy Bentham, *Deontology*, [?], 1: 125-126; 2: 45-46, 136, 156. I could not find the edition of *Deontology* used by Wolin anywhere in the notes.

<sup>59</sup> Bentham (2000), *The Theory of Fictions*, 64.

<sup>60</sup> Wolin (2004), 305-306.

<sup>61</sup> *Ibid.*, 307.

<sup>62</sup> *Ibid.*, 310. The reference is again to the *Deontology*, [?], 1: 32-33, 118-120; 2: 160-166, 263, 269, 295.

<sup>63</sup> *Ibid.*, 312.

visible influence on the general happiness, will be noticed and marked down.”<sup>64</sup>

This societal variant of the Panopticon suggests that Bentham, in keeping with his ethical theory and his theory of language, desired to ‘return’ to a more literal meaning of ‘conscience’, of ‘conscientia’ – that of shared knowledge, here in the sense that everyone will be witness to what everybody else does. Insofar as the presence of real spectators leads to the internalization of social values, this conception of conscience marks the provisional end of a particular conceptual development. To the extent that the ‘science’ in ‘conscience’ is that of others, this implies a return to the prehistory of conscience.

### 6.3. CHARLES DARWIN

Bentham looked for conscience and found nothing but a fiction; Charles Darwin (1809-1882), searched for it in his own field of expertise and found “a highly complex sentiment – originating in the social instincts, largely guided by the approbation or disapprobation of our fellow-men, ruled by reason, self-interest, and in later times by deep religious feelings, and confirmed by instruction and habit”.<sup>65</sup> This was what conscience ultimately became, if it developed to its full potential, and Darwin still seems to feel it deserves the highest respect. But he made the same mistake Bentham made – though ‘mistake’ is somewhat harsh a word, given that it was the natural consequence of a long conceptual development – in taking ‘conscience’ to be a purely indicative notion. That does not mean that there is no constructive side to Darwin’s view. Both Darwin and Freud drew attention to aspects of conscience that one could only neglect at one’s own peril. Their concepts of conscience were in many respects superior to those of the eighteenth-century optimists, and it is likely that popular conceptions of conscience in their day could do with a bit of demythologizing. Nevertheless, someone who is interested in the twentieth-century rejection of conscience by philosophers and psychologists alike, will inevitably wind up reading what people like Darwin and Freud wrote on the subject. My present interest in Darwin’s concept of conscience, then, regards especially the *loss* of meaning that occurs in it.

With regard to conscience, we might say that Charles Darwin is a combination of Adam Smith and the theory of evolution. But we recognize many elements of that theory in earlier authors. We find the importance of the drive towards self-preservation in Hobbes and Locke; the ‘social

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<sup>64</sup> Bentham, *Deontology*, [?], 2: 37-40.

<sup>65</sup> Darwin (1922), 203.

instincts' are also prefigured in their work. The following remark seems to echo Bentham:

“As we cannot distinguish between motives, we rank all actions of a certain class as moral, if performed by a moral being. A moral being is one who is capable of comparing his past and future actions or motives, and of approving or disapproving of them.”<sup>66</sup>

And Darwin's depiction of conscience as a 'sentiment' goes back to Hume and the moral sense theorists. With his attention to the *development* of conscience, he stands in the tradition of Locke and Smith, and it is the latter's work especially that seems to have left his mark on Darwin's thought.

According to Darwin, “any animal (...) endowed with well-marked social instincts (...) would inevitably acquire a moral sense or conscience, as soon as its intellectual powers had become as well, or nearly as well developed, as in man”.<sup>67</sup> Conscience is the result of the combination of social instincts and the power to reflect upon one's past or future deeds.

“A moral being is one who is capable of reflecting on his past actions and their motives—of approving of some and disapproving of others; and the fact that man is the one being who certainly deserves this designation, is the greatest of all distinctions between him and the lower animals.”<sup>68</sup>

But reflection is certainly not the whole thing:

“But in the fourth chapter I have endeavoured to shew that the moral sense follows, firstly, from the enduring and ever-present nature of the social instincts; secondly, from man's appreciation of the approbation and disapprobation of his fellows; and thirdly, from the high activity of his mental faculties, with past impressions extremely vivid; and in these latter respects he differs from the lower animals. Owing to this condition of mind, man cannot avoid looking both backwards and forwards, and comparing past impressions. Hence after some temporary desire or passion has mastered his social instincts, he reflects and compares the now weakened impression of such past impulses with the ever-present social instincts; and he then feels that sense of dissatisfaction which all unsatisfied instincts leave behind them, he therefore resolves to act differently for the future,—and this is conscience.”<sup>69</sup>

The social instincts are at odds with 'temporary desires or passions'. Smith's Stoicism seems to have got hold on Darwin, too. Conscience is a matter of

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<sup>66</sup> Ibid., 170.

<sup>67</sup> Ibid., 150.

<sup>68</sup> Ibid., 933.

<sup>69</sup> Idem.

self-command, by which Darwin means the mastery over one's impulses and passions, everything that is hot and passionate as opposed to cool, reasoned, and reasonable. Thus, he writes the following about the dog's conscience:

“Besides love and sympathy, animals exhibit other qualities connected with the social instincts, which in us would be called moral; and I agree with Agassiz that dogs possess something very like a conscience.

Dogs possess some power of self-command, and this does not appear to be wholly the result of fear.”<sup>70</sup>

Conscience, though a natural phenomenon, is also a battle against nature. Though when we pass from Smith to Hume, we (once again) make the transition from Nature to nature, it is not complete. Darwin still distinguishes between a higher and a lower nature. For a good Victorian, the passions obviously belong to the latter category. About the social instincts, Darwin says in one place that “[a]s they are highly beneficial to the species, they have in all probability been acquired through natural selection”.<sup>71</sup> But in a footnote he also says:

“To do good in return for evil, to love your enemy, is a height of morality to which it may be doubted whether the social instincts would, by themselves, have ever led us. It is necessary that these instincts, together with sympathy, should have been highly cultivated and extended by the aid of reason, instruction, and the love or fear of God, before any such golden rule would ever be thought of and obeyed.”<sup>72</sup>

Morality has its natural origin in the social instincts, but its highest manifestations are cultural achievements. He mentions the ‘love or fear of God’ here, but elsewhere he makes it clear that we have no need to assume the existence of ‘a special God-implanted conscience’, and, moreover, he speaks of ‘the reverence or fear of the Gods, or Spirits believed in by each man’ as a ‘most important, although not necessary’ element, ‘especially in cases of remorse’.<sup>73</sup> Conscience is not implanted by God, though it may be strengthened by fear of God. Importantly, God has nothing to do with the content of conscience, which is totally dependent on the approbation and disapprobation of one's fellow men, and ultimately on the survival or happiness of the species. Survival and happiness are not the same thing, of course, but it seems that although the first is primary, conscience proceeds to ‘take an interest’, so to speak, in the second:

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<sup>70</sup> Ibid., 158.

<sup>71</sup> Ibid., 933.

<sup>72</sup> Ibid., 173 (note continued from 172).

<sup>73</sup> Ibid., 174-175.

“As all men desire their own happiness, praise or blame is bestowed on actions and motives, according as they lead to this end; and as happiness is an essential part of the general good, the greatest-happiness principle indirectly serves as a nearly safe standard of right and wrong.”<sup>74</sup>

Darwin’s concept of conscience is not without consequences for other ethical notions. ‘Authority’, for instance, gives way to force, or ‘enduringness’: “[A]fter their gratification when past and weaker impressions are judged by the ever-enduring social instinct (...) retribution will surely come”.<sup>75</sup>

“Man prompted by his conscience, will through long habit acquire such perfect self-command, that his desires and passions will at last yield instantly and without a struggle to his social sympathies and instincts, including his feeling for the judgment of his fellows. (...) Thus at last man comes to feel, through acquired and perhaps inherited habit, that it is best for him to obey his more persistent impulses.”<sup>76</sup>

When a man’s desires are stronger than his social instincts, and his conscience cannot master them, “then he is essentially a bad man; and the sole restraining motive left is the fear of punishment, and the conviction that in the long run it would be best for his own selfish interests to regard the good of others rather than his own.”<sup>77</sup> Why is he a bad man? Because his conscience has not ‘power, as it has right’. But in what sense is a man responsible for the strength and development of his own conscience? If his social instincts are weak, this is surely not his fault, for he was born with them. If his ‘appreciation of the approbation and disapprobation of his fellows’ is weak, what could he have done to make it stronger?<sup>78</sup> Perhaps his ‘fellows’ have been negligent in showing their (dis)approbation. And how should his mental faculties correct a failure of the previous two building blocks of conscience? Darwin may speak of ‘the conviction that in the long run it would be best for his own selfish interests to regard the good of others rather than his own’, but a conviction is all it is. It is plain enough that ‘selfish interests’ are sometimes better served by *dis*regarding the good of others. One’s ‘mental faculties’ can be very instructive in this respect. Once again, the problem is that of moral motivation – not so much its weakness, but its ground. Darwin *describes* how man come to ‘behave themselves’ in

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<sup>74</sup> Ibid., 934. Darwin explicitly refers to utilitarianism here.

<sup>75</sup> Ibid., 174.

<sup>76</sup> Ibid., 177.

<sup>77</sup> Ibid., 177-178.

<sup>78</sup> Cf. *ibid.*, 174: “How far each man values the appreciation of others, depends on the strength of his innate or acquired feeling of sympathy; and on his own capacity for reasoning out the remote consequences of his acts.”

society. But he cannot tell us why people *should* behave morally; or, there is no other meaning to these words:

“The imperious word *ought* seems merely to imply the consciousness of the existence of a rule of conduct, however it may have originated. Formerly it must have been often vehemently urged that an insulted gentleman *ought* to fight a duel. We even say that a pointer *ought* to point, and a retriever to retrieve game. If they fail to do so, they fail in their duty and act wrongly.”<sup>79</sup>

Darwin makes no distinction between a moral and a non-moral ‘ought’. Any ‘rule’ of conduct gives rise to a ‘duty’. Darwin makes it clear that he does

“not wish to maintain that any strictly social animal, if its intellectual faculties were to become as active and as highly developed as in man, would acquire exactly the same moral sense as ours. (...) they might have a sense of right and wrong, though led by it to follow different lines of conduct. If (...) men were reared under precisely the same conditions as hive-bees, there can hardly be any doubt that our unmarried females would, like the worker-bees, think it a sacred duty to kill their brothers, and mothers would strive to kill their fertile daughters; and no one would think of interfering. Nevertheless, the bee, or any other social animal, would gain in our supposed case (...) some feeling of right or wrong, or a conscience.”<sup>80</sup>

Morality is just what the survival (and possibly, when survival is not directly at stake anymore, the happiness) of one’s species requires, and that is all there is to it. Conscience is the individualized, interiorized agent of the interests of the community.

The social instincts do not extend beyond the boundaries of one’s own community.<sup>81</sup> Moral standards differ between communities: “It has been recorded that an Indian Thug conscientiously regretted that he had not robbed and strangled as many travellers as did his father before him.” In order to ‘demonstrate’ the moral inferiority of such a view and practice, Darwin needs to take recourse to the opposition between the ‘rude’ and the ‘refined’, the barbaric and the civilized: “In a rude state of civilisation the robbery of strangers is, indeed, generally considered as honourable.”<sup>82</sup> Reason plays a part in the advance of civilization; its function is to help

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<sup>79</sup> Ibid., 177. Cf. *ibid.*, 933-934: “Any instinct, permanently stronger or more enduring than another, gives rise to a feeling which we express by saying that it ought to be obeyed. A pointer dog, if able to reflect on his past conduct, would say to himself, I ought (as indeed we say of him) to have pointed at that hare and not have yielded to the passing temptation of hunting it.”

<sup>80</sup> Ibid., 151-152.

<sup>81</sup> Ibid., 933.

<sup>82</sup> Ibid., 180.



people perceive what is in their own and the public interest, and that these two coincide. Reason may heighten the sensitivity of conscience, and “may even somewhat compensate for weak social affections and sympathies”. “But with the less civilised nations reason often errs, and many bad customs and base superstitions come within the same scope, and are then esteemed as high virtues, and their breach as heavy crimes.” Hence the value of education. But the influence of reason must not be overstated: “The moral nature of man has reached its present standard, partly through the advancement of his reasoning powers and consequently of a just public opinion, but especially from his sympathies having been rendered more tender and widely diffused through the effects of habit, example, instruction, and reflection.” Darwin even thinks it possible that ‘virtuous tendencies may be inherited’. Another civilizing and moralizing agent has been the belief in the existence of ‘an all-seeing Deity’, the idea of which is not innate, but arises only in a long-developed culture.<sup>83</sup> Still, if the rhetoric of ‘civilization’ is ignored, there is nothing in all this to counter the moral relativism implied in Darwin’s theory. Even if “[u]ltimately man does not accept the praise or blame of his fellows as his sole guide”, and “conscience then becomes the supreme judge and monitor” (as Smith also maintained), this is merely a matter of fact, for that conscience knows no other criterion than that of the interests of the particular community to which its ‘owner’ belongs.

Darwin did not accept the relativistic consequences of his theory himself, if we are to judge by his autobiography.<sup>84</sup> He writes that after reflection, man finds “in accordance with the verdict of all the wisest men that the highest satisfaction is derived from following certain impulses, namely the social instincts”. He will then receive the approbation of his fellows.

“His reason may occasionally tell him to act in opposition to the opinion of others, whose approbation he will then not receive; but he will still have the solid satisfaction of knowing that he has followed his innermost guide or

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<sup>83</sup> *Ibid.*, 935.

<sup>84</sup> Others were less shy in their wordings, but remained optimistic about the prospects for morality. Charles Bray, for instance, writes: “As to conscience, it is merely inherited experience of what is good or bad, that is, pleasurable or painful. (...) Conscience is innate, that is, it is, ‘the gathered-up experience of bygone generations, transmitted to us by inheritance.’ (...) Good and evil are purely subjective, and the moral world is as entire a creation of the mind as the physical world. (...) Morality is the science of living together in the most happy manner possible. (...) Do not let us be alarmed then, for the interests of morality, for as J. S. Mill says, ‘a volition is a moral effect, which follows the corresponding moral causes as certainly and invariably as physical effects follow their physical causes.’” (Bray [1869], 412.)

conscience. – As for myself I believe that I have acted rightly in steadily following and devoting my life to science.”<sup>85</sup>

He seems, privately, to have had a somewhat romantic conception of conscience. It is a strange mixture of conceptual thought and symbolic expression. Conscience is closely allied to vocation – a vocation, no doubt, that Darwin would have seen as beneficial to society.<sup>86</sup> But whatever the role of conscience in his private life, the implications of his public views are clear. By defining conscience as a ‘sentiment’, based on social instincts and societal approval and disapproval, it has lost much of its depth, and with it its possible critical function. It has also lost its personal quality, having become the guardian of the rules prevalent in a certain community in a certain time – rules that will differ from community to community. It has become very difficult to see why an individual’s ‘conscience’, especially if it were at odds with social values, would deserve special respect, or even merit consideration. This is no reason to simply reject or ignore Darwin’s views. There are many valuable insights in his theory; the challenge is to incorporate them in a viable concept of conscience.

#### 6.4. SIGMUND FREUD

As Darwin’s concept of conscience was, in a sense, the natural consequence of the development of Anglo-Saxon thought on the subject, so Freud’s concept of conscience was, in certain respects at least, the natural consequence of continental, in particular Kantian thought. The Freudian concept, however, is also more clearly a *critique* of the preceding tradition. It was not the first critique. Two philosophers stand out as major influences on Freud, and for a good understanding of the Freudian concept of conscience it will be helpful to say a few words about them.

Arthur Schopenhauer (1788-1860), in many respects a Romantic philosopher, challenged the anchorage conscience had found in Reason. According to Mokrosch, it was the experience of the unpleasant reality of the French Revolution (contrasting sharply with the Enlightenment ideology behind it) that led Schopenhauer to his view of man as a being driven by a

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<sup>85</sup> Barlow (1969), 94-95.

<sup>86</sup> As to the role of conscience in Darwin’s private life, the following excerpt from a letter to his cousin and future wife is amusing: “I was quite ashamed of myself today, for we talked for half an hour, unsophisticated geology, with poor Mrs. Lyell sitting by, a monument of patience. I want practice in ill-treatment the female sex, - I did not observe Lyell had any compunction; I hope to harden my conscience in time: few husbands seem to find it difficult to effect this.” (Darwin and Seward [1903], Letter 10, to Emma Wedgwood). Given his strong doubts about marriage – he drew up an (also highly amusing) list of pros and cons before deciding in favour of marriage – he may have been half-serious.

blind Will, a ‘burning greed’, the source of suffering.<sup>87</sup> According to Schopenhauer, the conscience consists “etwa aus 1/5 Menschenfurcht, 1/5 Deisidämone, 1/5 Vorurteil, 1/5 Eitelkeit und 1/5 Gewohnheit”.<sup>88</sup> He also observed: “Religiöse Leute, jedes Glaubens, verstehen unter Gewissen sehr oft nichts anderes, als die Dogmen und Vorschriften ihrer Religion und die in Beziehung auf diese vorgenommene Selbstprüfung.”<sup>89</sup> This is a critique of doctrinalization, but it is partly misdirected, for the religious people to whom he refers will probably *mean* something else by ‘conscience’ themselves, though the meaning of the term as it can be derived from their actual (non-reflective) use of it may come down to what Schopenhauer says. That is, their dogmas may constitute the contents of their consciences, but that does not mean that when they say ‘my conscience’, they mean ‘my dogmas’.

Friedrich Nietzsche (1844-1900) did not merely criticize rationalist concepts of conscience; he *despised* it as a Jewish-Christian invention. I quoted him in chapter 1:

“Was ist jüdische, was ist christliche Moral? Der Zufall um seine Unschuld gebracht; das Unglück mit dem Begriff ‘Sünde’ beschmutzt; das Wohlbefinden als Gefahr, als ‘Versuchung’; das physiologische Übelbefinden mit dem Gewissens-Wurm vergiftet...”<sup>90</sup>

Nietzsche loathed Christian morality as something that stifled the strong, the creative, the powerful, while nourishing the weak, the sick, the disabled. In the above quotation, he anticipates the notion of ‘moral luck’ (in this case ‘moral *bad* luck’) – a blind spot in ethical theory until the nineteen-seventies. And everything that makes people feel good is called ‘temptation’, is burdened with guilt. Hume had spoken sarcastically of “[c]elibacy, fasting, penance, mortification, self-denial, humility, silence, solitude, and the whole train of monkish virtues”.<sup>91</sup> Nietzsche devotes the third part of his *Zur Genealogie der Moral* to a cynical critique of asceticism. The second part deals with “‘Schuld’, ‘Schlechtes Gewissen’ und Verwandtes”. Conscience is here described as an awareness of responsibility, sunk to the ultimate depths of man, becoming a dominating instinct.<sup>92</sup> How did this instinct arise? It is the ‘tiefe Erkrankung’ that is the result of the greatest change man has ever experienced: “jener Veränderung, als er sich engültig in den Bann der

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<sup>87</sup> Mokrosch (1983), 9-10.

<sup>88</sup> Arthur Schopenhauer, *Über die Grundlegungen der Moral*, § 3, quoted in: Mokrosch (1983), 11.

<sup>89</sup> Grimm and Grimm (1911), 6220; quoted from Schopenhauer, *Über die Grundlegungen der Moral*.

<sup>90</sup> Nietzsche (1969), 192 (§ 25).

<sup>91</sup> Hume (1902), 219.

<sup>92</sup> Nietzsche (1983), 48.

Gesellschaft und des Friedens eingeschlossen fand”.<sup>93</sup> This forced man to suppress his natural instincts, and make shift with his consciousness, ‘ihr ärmlichstes und fehlgreifendstes Organ’.<sup>94</sup> The instincts of freedom, ‘die Feindschaft, die Grausamkeit, die Lust an der Verfolgung, am Überfall, am Wechsel, an der Zerstörung’ – all these were barred from expression, with great consequences.

“Alle Instinkte, welche sich nicht nach außen entladen, *wenden sich nach innen* – dies ist das, was ich die *Verinnerlichung* des Menschen nenne: damit wächst erst das an den Menschen heran, was man später seine ‘Seele’ nennt. (...) Jene furchtbaren Bollwerke, mit denen sich die staatliche Organisation gegen die alten Instinkte der Freiheit schützte (...) brachten zuwege, daß alle jene Instinkte des wilden, freien, schweifenden Menschen sich rückwärts, sich *gegen den Menschen selbst* wandten.”<sup>95</sup>

“Dieser gewaltsam latent gemachte *Instinkt der Freiheit* (...), dieser zurückgedrängte, zurückgetretene, ins Innere eingekerkerte und zuletzt nur an sich selbst noch sich entladende und auslassende Instinkt der Freiheit: das, nur das ist in seinem Anbeginn das *schlechte Gewissen*.”<sup>96</sup>

Conscience represses a latent instinct for freedom; it *is* the instinct for freedom turned inward. It is a societal perversion of natural man – and yet Nietzsche says: “Man hüte sich, von diesem ganzen Phänomen (...) gering zu denken...”<sup>97</sup> It is still that original force that is capable of great things, though in an inner, smaller form, and turned backwards. The bad conscience is a sickness, yes, “aber eine Krankheit, wie die Schwangerschaft eine Krankheit ist.”<sup>98</sup> Conscience bears the child of its own defeat, the (re)discovery of freedom. Nietzsche expresses the messianic hope that one day, ‘in a stronger time’, a man must come, “der *erlösende* Mensch der großen Liebe und Verachtung, der schöpferische Geist”, that will deliver us from the curse of the present ideal.<sup>99</sup> This is a man ‘beyond good and evil’, a man, in a sense, with a ‘transmoral conscience’.<sup>100</sup> This man, ‘Antichrist und Antinihilist’ would inaugurate a new era, which would constitute a return to the original condition of freedom, but in a more sublime sense; the beauty that would be

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<sup>93</sup> Ibid., 71.

<sup>94</sup> Ibid., 72.

<sup>95</sup> Idem.

<sup>96</sup> Ibid., 74.

<sup>97</sup> Ibid., 75.

<sup>98</sup> Ibid., 76.

<sup>99</sup> Ibid., 84.

<sup>100</sup> Tillich (1969), 78.

discovered would be heightened and intensified by the contrast with the present ugliness.<sup>101</sup>

Freud's concept of conscience has a strong connection with Nietzsche's. In *Das Unbehagen in der Kultur* he speaks of a battle between 'culture' and what we might call 'nature', in particular the 'Aggressionsneigung', that Freud sees as an 'ursprüngliche, selbständige Triebanlage des Menschen'.<sup>102</sup> Culture is described as a 'special process' that takes place through mankind ['der über die Menschheit abläuft'], a process in the service of 'Eros', "der vereinzelt menschliche Individuen, später Familien, dann Stämme, Völker, Nationen zu einer großen Einheit, der Menschheit, zusammenfassen wolle" – why, we do not know.<sup>103</sup> This 'Programm der Kultur' resists the natural aggressive instinct ("Trieb") of man, the sibling and major representative of the 'Todestrieb'. So there is a battle between 'Eros' and 'Tod', between 'Lebenstrieb' and 'Destruktionstrieb'. Freud then asks the following question:

“Welcher Mittel bedient sich die Kultur, um die ihr entgegenstehende Aggression zu hemmen, unschädlich zu machen, vielleicht auszuschalten?”<sup>104</sup>

This is something we can learn, Freud says, by studying the psychological development of the individual. Something very remarkable occurs:

“Die Aggression wird introjiziert, verinnerlicht, eigentlich aber dorthin zurückgeschickt, woher sie gekommen ist, also gegen das eigene Ich gewendet. Dort wird sie von einem Anteil des Ichs übernommen, das sich als Über-Ich dem übrigen entgegenstellt, und nun als 'Gewissen' gegen das Ich dieselbe strenge Aggressionsbereitschaft ausübt, die das Ich gerne an anderen, fremden Individuen befriedigt hätte. Die Spannung zwischen dem gestrengen Über-Ich und dem ihm unterworfenen Ich heißen wir Schuldbewußtsein; sie äußert sich als Strafbedürfnis. Die Kultur bewältigt also die gefährliche Aggressionslust des Individuums, indem sie es schwächt, entwaffnet und durch eine Instanz in seinem Inneren, wie durch eine Besatzung in der eroberten Stadt, überwachen läßt.”<sup>105</sup>

Conscience is a function of the superego ('Über-Ich'). It is the superego in its judging and threatening function; the superego also *commands* the

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<sup>101</sup> Nietzsche (1983), 75. There is thus a structural resemblance between Nietzsche's view of conscience and the Christian idea of *synderesis*. Both are signs of an original state from which we have fallen – a better, natural state, which we long to return to.

<sup>102</sup> Freud (1948a), 481.

<sup>103</sup> *Idem.*

<sup>104</sup> *Ibid.*, 482.

<sup>105</sup> *Ibid.*, 482-483.

individual.<sup>106</sup> The above view of the origin of conscience is not just Nietzschean, but also seems very much in line with traditional Christian thought: man is inherently evil, and conscience battles this evil by fighting man's 'animal' nature. But this is not the Freudian view. How, he asks, do we come to feel guilty? The traditional answer is: because we have done – or contemplated doing – something wrong, something we call 'bad'. But how do we distinguish between good and bad (or evil)? "Ein ursprüngliches, sozusagen natürliches Unterscheidungsvermögen für Gut und Böse darf man ablehnen."<sup>107</sup> There is no such thing as an innate conscience. After Nietzsche, he observes: "Das Böse ist oft gar nicht das dem Ich Schädliche oder Gefährliche, im Gegenteil auch etwas, was ihm erwünscht ist, ihm Vergnügen bereitet." The conclusion is clear:

"Darin zeigt sich also fremder Einfluß; dieser bestimmt, was Gut und Böse heißen soll."<sup>108</sup>

This 'foreign influence' is first of all that of the parents, on whose loving care the child depends. The first and primary motive for the child to act in such a way as pleases its parents is the fear of losing their love.<sup>109</sup> Loss of love would also entail loss of protection, and the risk of punishment. The fear for those ('bad') things that will lead to loss of love is called 'bad conscience', "aber eigentlich verdient er diesen Namen nicht, denn auf dieser Stufe ist das Schuldbewußtsein offenbar nur Angst vor dem Liebesverlust, 'soziale' Angst".<sup>110</sup> Many adults do not venture beyond this stage, though in their case society has taken the place of the Father, or both parents. This, Freud observes, is why many people will do 'bad' things, if only they know they will not be found out. "Eine große Änderung tritt erst ein, wenn die Autorität durch die Aufrichtung eines Über-Ichs verinnerlicht wird." Only

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<sup>106</sup> Langston (2001), 89. He quotes Freud: "We call this agency the superego and are aware of it in its judicial function as our conscience." (Sigmund Freud, *An Outline of Psycho-Analysis*, Standard Edition of the Complete Psychological Works of Sigmund Freud, Hogarth Press and the Institute of Psycho-Analysis, London, 1964, 205.) Cf. Freud (1948a), 496: "Das Über-Ich ist eine von uns erschlossene Instanz, das Gewissen eine Funktion, die wir ihm neben anderen zuschreiben, die die Handlungen und Absichten des Ichs zu überwachen und zu beurteilen hat, eine zensorische Tätigkeit ausübt." Langston incorrectly assigns the monitoring function to the superego, not the conscience.

<sup>107</sup> Freud (1948a), 483.

<sup>108</sup> Idem.

<sup>109</sup> Idem. Langston (2001), 90, writes: "Freud indicates that the 'torments caused by the reproaches of conscience correspond precisely to a child's fear of loss of love' (206) and are clearly connected to a feeling of anxiety (146)." Langston refers to Sigmund Freud, *An Outline of Psycho-Analysis*.

<sup>110</sup> Freud (1948a), 484.

then can we truly speak of conscience and feelings of guilt. The difference between doing wrong and only contemplating it now vanishes completely, “denn vor dem Über-Ich kann sich nichts verbergen, auch Gedanken nicht”.<sup>111</sup> This leads to a remarkable paradox: the more virtuous a person is, the stronger will his awareness of sinfulness be. That he abstains from the satisfaction of his instincts and urges does not absolve him; on the contrary: not only is the existence of the impulse enough to anger the conscience, it actually *beigbtens* the feeling of guilt. ‘Every bit of aggression, the satisfaction of which we forgo’, is adopted by the superego, “und dessen Aggression (gegen das Ich) steigert”. “Jeder triebverzicht wird nun eine dynamische Quelle des gewissens, jeder neue Verzicht steigert dessen Strenge und Intoleranz...”<sup>112</sup>

The Freudian conscience is purely authoritarian. It is the extension of paternal – and ultimately, societal – authority within the ego. In the tripartite division of the psyche Freud makes, the ‘id’ represents the original instincts, the ‘ego’ the intermediary between the ‘id’ and the external world that enables the controlled satisfaction of instinctual demands, and the ‘superego’ the internalized authority of the parents and society, which controls the ego.<sup>113</sup> Conscience is the superego in its judicial function. Neither the conscience nor the superego as a whole operates exclusively on a conscious level; the operation of both is often unconscious. This is enabled by the fact that the internalization of paternal authority is a process of *identification*. The superego, and therefore conscience, is the result of the way the Oedipus (or, in the case of girls, Electra) complex is resolved. Both because of the attraction to the mother, and due to the dissatisfaction caused by having to abide by parental (primarily fatherly) rules, the young boy wishes to take the place of his father. Unable to do so, he identifies himself with his father; that is, with the primary authority figure. “Diese Identifizierung mit der Autoritätsperson in der Phantasie geht ins Unbewußte über, verfestigt sich hier und bringt ein vom bewußten Ich abgespaltenes zweites Ich zustande, das Über-Ich oder Ich-Ideal.”<sup>114</sup> Conscience reproaches an individual when he fails to live up to the ego-ideal; conscience is the ‘guardian’ of the ego-ideal.<sup>115</sup>

Kant had explained conscience in terms of an ‘inner court’ in which we must imagine ourselves to be judged by a ‘real or ideal person’. Freud takes the Kantian view one important step further: in conscience we *are* judged by a *real* person (or real persons), with whom we have identified

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<sup>111</sup> Idem.

<sup>112</sup> Ibid., 488. Freud does not really mean ‘jede Triebverzicht’, but only that of the aggressive instincts.

<sup>113</sup> See Langston (2001), 88-89.

<sup>114</sup> Reiner (1976), 304.

<sup>115</sup> Freud (1949), 163.

ourselves. If we are raised by a Lockean ‘old woman’, than our moral principles will have the authority of an old woman – no more, no less. Of course the superego is dynamic; parental influence is not the only influence – even doctors (psycho-therapists) may influence (or ‘correct’) the superego.<sup>116</sup> This does not necessarily mean that what the super-ego says is not really worth listening to; it does not even vitiate the possibility of moral truth. But it is likely to lead to a certain moral relativism. Gerhard Funke points out that anthropologists, psychologists, sociologists, and philosophers have relativized the dictates of conscience by placing the genesis of conscience, and the ‘quaestio facti’ instead of the ‘quaestio iuris’ in the foreground. In the work of Locke, Nietzsche, Freud, and others, “handelt es sich [immer] um die Rückführung des Sollens auf außer-sittliche Tatbestände, zugleich um die Reduktion des Inhalts der ‘Stimme des Gewissens’ auf empirische Realfaktoren”.<sup>117</sup>

Like Darwin, Freud took ‘conscience’ to be an indicative notion, and hence started to search for what was indicated by it – that is, a ‘natural’ (but in Freud’s case also very much a ‘cultural’) phenomenon. Both Nietzsche and Freud present us with a socio-psychological reduction of conscience. The one-sidedness of Freud’s concept of conscience – that is, its exclusive emphasis on the element of authority – eliminates the possibility of autonomy for the conscience.<sup>118</sup> Even though conscience is the result of the *internalization* of authority, it remains in a significant sense heteronomous. Through conscience, one’s parents and society control the individual. Freud’s perspective is very much a therapeutic one. Conscience is an oppressive and suppressing force within the individual. The ‘fear of conscience’ develops from the ‘fear of castration’.<sup>119</sup> The ‘Katastrophe des Ödipus-Komplexes – die Abwendung vom Inzest, die Einsetzung von Gewissen und Moral’ can be seen as ‘einen Sieg der Generation über das Individuum’.<sup>120</sup> Such phrases, but in fact the whole of Freud’s theory, suggest the pathological character of conscience. It is not surprising that Freud quotes Shakespeare: “So macht Gewissen Feige aus uns allen...” – he sees the feeling of guilt as ‘das wichtigste Problem der Kulturentwicklung’, and believes that “der Preis für den Kulturfortschritt in der Glückseinbuße

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<sup>116</sup> Langston (2001), 88; Blum (1958), 184.

<sup>117</sup> Funke (1976), 256.

<sup>118</sup> Cf. Reiner (1976), 305. Bishop Butler also stressed the authority of conscience, but in a very different way; for him, the authority of conscience was the authority of man’s nature. Hence it was not at odds with the autonomy of conscience. But there are also similarities between Butler and Freud; Freud has been called ‘Butler in fancy-dress’, id, ego, and super-ego taking the place of particular impulses, the regulative principles of cool self-love and benevolence, and conscience, respectively. See Mace (1964), 105.

<sup>119</sup> Sigmund Freud (1948c), 170.

<sup>120</sup> Sigmund Freud (1948b), 29.



durch die Erhöhung des Schuldgefühls bezahlt wird”.<sup>121</sup> These are very strong statements, hard to verify (if at all), and certainly one-sided. Later psychoanalysis would correct Freud in this respect; for instance in the work of Erich Fromm. Freud also pushed both philosophical and psychological conceptualization in the direction of functionalism, that focuses on the function of conscience in the personality (or sees conscience as a function of the personality). The content of conscience recedes from view; in Freud’s concept, there is content, but this is wholly derived from the person itself, and ultimately from other people (parents, society). There is no hint of an idea that conscience might (occasionally) reveal something about a non-subjective moral reality; that it might actually make a positive contribution to a person’s life and that of others. Despite the merits of the Freudian concept – which there surely are, for Freud makes an important correction to popular naive concepts of conscience, and rightly points out the problems of a moral education that is too rigid (or otherwise flawed) – it is not surprising that conscience, in the twentieth century, lost virtually all relevance to philosophers (ethicists) and psychologists alike.

#### 6.5. CONCLUDING REMARKS

There are many ways in which one could characterize the conceptual history of conscience – it could be described in terms of (or related to processes of) secularization, individualization, interiorization, or (as Voegelin would prefer) immanentization. Of these four I find the last the most useful. There is indeed a tendency to immanentize the transcendent to which the conscience relates. The true self takes the place of the divine law; the father that of the ‘synderesis’. But in the first case there is still a form of transcendence – and even in the second, where conscience transcends the individual *socially*. A disadvantage of the ‘immanentization view’ is that it focuses too much on the last few centuries of North-Western Europe, perhaps anachronistically interpreting the older past in light of the more recent. Besides, conscience was always seen as something of the ‘in-between’, the ‘metaxy’, as Voegelin would say with Plato, for it was always partly immanent and partly transcendent; a shift of balance does seem to have occurred, but that is what it is.

Of course I have not finished with the conceptual history of conscience; I have not considered the twentieth century (and the next) yet. There is a good reason for that. I see the chapters 2 to 6 as a unity. The next chapter, which deals with some twentieth-century concepts, is a record of a fresh start in some respects. There are clear links with previous concepts, of course, but especially the first half of the twentieth century constitutes a unique caesura in the conceptual history of conscience. For the first time in

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<sup>121</sup> Freud (1948a), 494.

two millennia, the prime candidates to think about the subject choose to avoid the concept. For most ethicists and psychologists, this is still the case. Only in theology did conscience remain a valid concept. This is why I have written my conceptual history of conscience from the perspective of *loss of meaning*. And this is why I came to speak of the *symbol* of conscience, and of symbolizations, not just conceptualizations of conscience. If I would have to characterize the history of expressions of and thought on conscience as it has influenced Western-European thought, action, and feeling in one phrase, I would say that it is the history of the gradually progressing forgetfulness of the symbolic aspect of expressions of conscience, in favour of an increasingly indicative understanding of the terms that had come to be the most stable expressions for experiences of conscience – in particular the term ‘conscience’ itself.

But the reality is always more complex, which is why I have drawn attention to persistent and new symbolizations, as well as to the interweaving of symbolizations and conceptualizations, and of the influence of both on the experience of conscience. Nevertheless, the dominant trend was towards an indicative understanding of conscience, which means that it was no longer seen as a symbolic expression of a certain class of experiences. The then developing conceptual history of conscience is a history of doctrinalization, in the sense of a fixation of meaning. This ultimately led to a rejection of conscience as a meaningful concept. In retrospect, we can say that the Enlightenment concepts of conscience were indeed *grounded* in Nature and Reason; they would not really come afloat anymore. The following chapter deals with a few attempts to make sense of conscience anew. Being purely functionalist concepts, they avoid a naive indicative view of conscience to some extent; they also deal with other problems that had arisen in preceding centuries: if conscience must be considered to be purely subjective in its dictates, how can it still be important? Why would one (have to) listen to it? Such questions are particularly relevant with a view to the ‘problem’ of conscientious objection – a problem that is as old as conscience, but in its well-known form also marks a significant break between the twentieth century and the preceding ones.



## 7. Twentieth-century concepts of conscience

“Die klassischen Titel des Subjekts - Bewußtsein, Willensfreiheit, Geist, Reflexion - werden eigentümlich undifferenziert und gehaltlos erscheinen. Ihr appeal wird verblassen, und wer in ihrem Namen Moral zu treiben sucht, wird prüfen müssen, wie weit die guten Namen noch wirken.”

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### 7.1. INTRODUCTION

#### 7.1.1. Twentieth-century functionalism and the conceptual history of conscience

‘Die guten Namen’, ‘die klassischen Titel des Subjekts’ – conscience, although not mentioned by Luhmann in this passage, was surely one of them, and twentieth-century philosophers (and psychologists, and others) certainly tested its validity. Most of them, however, did so privately, and rejected the concept. That is, we must assume that they did, or else that they rejected it without even considering its validity. The charity principle obliges us to assume the former. Even considering the prehistory of twentieth-century ethics, it is quite remarkable that there has hardly been an ethicist of some stature that really used the concept of conscience. An occasional use of the term as an ordinary language concept is usually all. In dictionaries and encyclopedias of ethics, ‘conscience’ tends to be an historical entry, discussing the use made of the term by scholastics, Butler, and Kant. MacIntyre, in his short history of ethics, mentions conscience a couple of times, but at the latest in connection with John Stuart Mill.<sup>1</sup> The term does not appear in the index to Mary Warnock’s *Ethics Since 1900*.<sup>2</sup> It is quite safe to conclude that the concept of conscience is unimportant in twentieth-century ethics.

In the foregoing chapters, I presented my view of the background of this situation. A gradual doctrinalization and an increasingly indicative understanding of conscience undermined itself by provoking the question what exactly was ‘pointed out’ by the word ‘conscience’, to what existent entity the term referred, and because this could not be shown, or because what was found was not very dignified, the concept was eventually dropped by most philosophers and psychologists. When the idea of conscience as a separate moral faculty was disproven, the reaction of many was to drop the concept altogether – which was not a necessary step, of course. Hence, some did *not* take that step, and sought a different solution. I have described

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<sup>1</sup> MacIntyre (1998).

<sup>2</sup> Warnock (1967).

doctrinalization in terms of the fixation of meaning. This could apply to a) the meaning of the term 'conscience', and b) the contents of conscience. In the first case, it is the concept of conscience that is fixated. In the second, it is not the formal side of conscience, but its contents that become fixated. The scholastics formally did so only with the 'synderesis', but effectively fixated the contents of 'conscientia' as well, which enabled them to speak confidently and elaborately of a 'conscientia erronea'. After the Reformation, opposing religious parties seemed to think that the experience of conscience could only be a specifiable and specified experience – the experience that certain specified things are objectively wrong, and equally specified things objectively right. Anyone who claimed another experience of conscience obviously had a false conscience. Nineteenth-century criticism dealt decisively with the view that conscience is an objective source of moral knowledge, or an objective judge of right and wrong. Twentieth-century concepts of conscience attempt to deal with this problem of the diversity of the 'dictates' of people's consciences.

Some authors say that conscience has become subjective. In one sense, this is nonsense. Conscience has not *become* subjective, because it has always been subjective. We must not confuse the reflection on conscience with the experiential phenomenon. If concepts of conscience tend increasingly towards the view that conscience is subjective, nothing happens to conscience itself. But of course concepts do not change for nothing. So, in another sense, the idea that conscience has become subjective is not nonsensical. The observation behind it could be that whereas once there was a large commonality to people's experiences of conscience – both in form and in contents – we are now faced with an unprecedented diversity in this respect. What my conscience 'says' may differ radically from what your conscience 'says', and while my conscience may exclusively issue commands, pronounce judgements, and measure out punishments, yours may be a tempting voice of inspiration, a moral muse. The way in which conscience manifests itself, when it does, and what it 'says', seems to depend on the peculiarities of the subject (the individual) in question. While those authors who speak of the subjectivization of conscience from the perspective of a dogmatic conception of conscience are plainly in the wrong, because they fail to recognize that conscience has always been a matter of subjective experience and its symbolic expression, those who point out the loss of a formerly existing commonality, an intersubjectivity, in the experience of conscience, need to be taken seriously.<sup>3</sup>

Twentieth-century concepts of conscience virtually always tend to some form of functionalism. They focus on the form, rather than the

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<sup>3</sup> That an experience is subjective does not mean that it is necessarily devoid of truth, or out of contact with reality, as advocates of an 'objective' conscience seem to assume. They fail to appreciate the nature of the subject-object relation.

contents of conscience, and they tend to interpret this form in terms of a function of the personality or of consciousness.<sup>4</sup> The idea that conscience is purely subjective could lead to the (Hobbesian) idea that it is just a matter of opinion, and hence that there is no reason to take conscientious objection more seriously than ‘normal’ objection. On this view, there is nothing special about *conscientious* objection. We generally think otherwise and see conscientious objection as a special, more important kind of objection. Functionalist concepts of conscience can be seen as attempts to vindicate this intuition, without recourse to presupposed contents of conscience.<sup>5</sup>

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<sup>4</sup> Some examples are: Luhmann (1965) and Luhmann (1973), Rotenstreich (1993), Childress (1979), Fuss (1964), Jenkins (1955), and, a bit earlier, Ryle (1971) [1940]. Ryle does use the term ‘faculty’, but this must not be misunderstood. Two quotations should be enough to illustrate his point of view: “...conscience...is a conduct regulating faculty.” (Ryle [1971], 188); “Conscience is not something other than, prior to or posterior to moral convictions; it is having those convictions in an operative degree, i.e. being disposed to behave accordingly.” (Ryle [1971], 189). Fuss states: “The role of conscience is purely and simply to ‘enforce’ our moral knowledge or belief with a tendency to act in accordance with what we know or believe. So regarded, it is a function of unification or integration...” (Fuss [1964], 118). According to Jenkins, “Conscience has a structure before it acquires a content.” (Jenkins [1955], 269-270). He criticizes psycho-analytical (and related) concepts of conscience for being ‘too narrow’ and for still focusing attention ‘on a specific content of conscience’ (Jenkins [1955], 269). Childress (1979), 319, describes conscience as a “mode of consciousness resulting from the application of [moral] standards to his conduct”; it “is not itself the standard”. Rotenstreich speaks of conscience as “one of those manifestations of consciousness where judging becomes prominent”, a ‘controlling authority’, directed toward “particular acts and deeds (...) but also to the constant aspect of our personality”. It plays a role in shaping the personality. (Rotenstreich [1993], 30-33). Rotenstreich does not refer to Luhmann, but their views are quite similar in some respects, though Luhmann provides us with a more systematic and unified view. Luhmann (1965), 285, says: “Das Gewissen ist nicht eine Stimme, sondern eine Funktion.” His views will be thoroughly discussed in this chapter. An example of the rare combination of a form of functionalism with ethical objectivism can be found in Vivas (1963), 91, and 123-124: “It is (...) the person, which decides moral perplexities and which in the performance of this, its most important function, is called ‘conscience.’”; “The conscience decides upon, but does not constitute, the right.”

<sup>5</sup> They are neutral with regard to the contents of conscience. This situation reflects Rawls’ remark that in times of moral insecurity, a shift of emphasis occurs from first- to second-order virtues. Among the second-order virtues are conscientiousness and integrity. These are exactly the things functionalist approaches to conscience centre around, in an attempt to meet the present-day need for a secular concept of conscience, that retains, as much as possible, the dignity and authority assigned to conscience when it was still generally held to be the Voice of God in man. Apart from seeing functionalist concepts as such attempts, we may also note that they are the result of the influence of a psychology that had in turn been influenced by post-

These non-substantialist accounts of conscience are the dominant kind of concept in (especially the second half) of the twentieth century.<sup>6</sup> The most systematically developed functionalist concept of conscience is the one put forward by Niklas Luhmann. He describes conscience as a (reflective) function of the personality. At the core of Luhmann's concept lies the notion of *integrity*. The function of conscience is to guard its owner's integrity. In Luhmann's theory, the content of conscience is linked to a person's biography. No one can randomly choose the contents of his or her conscience, yet they are different in every person. *The* question of conscience is: "Can I identify myself with this action?", or in other words: "Can I do this and still be me?". This means that in cases of conscience, the whole personality is at stake. This goes some way towards an explanation of the significance commonly attached to conscience.

### 7.1.2. Late nineteenth-century concepts of conscience

Luhmann's concept of conscience is the most systematically elaborated concept, but it was not the first 'post-faculty-view' of conscience. At the close of the nineteenth century the notion of faculty was still in use, but views of conscience were changing. Henry Sturt quotes a critic who wrote that

"to most of those who are seeking to know themselves conscience appears now as a perplexing abstraction, now as a phantom will o' the wisp; leading them on with momentary flashes of brightness when they give no particular heed to it, but fading indistinguishably into the other constituents of consciousness when they try to fix it with a steady gaze. An analysis which should succeed in grasping the reality and holding it firmly before us until we know it for what it is, would be a welcome addition to the literature of Ethics."<sup>7</sup>

On the one hand, we see that conscience is spoken of as a 'constituent of consciousness', which is a far more sophisticated view than the view that conscience is, in Sturt's words, a 'divinely sent monitor'. On the other hand, we see the expression of the differentiating consciousness, demanding the dissection of the mind in order to grasp the 'thing' that is conscience. Sturt

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Darwinian biology: "As psychology came under the influence of post-Darwinian biology, it drifted away from its previous concern with mental elements, or what might be called mental morphology, and began to occupy itself with questions of the functional significance of mental activity." (Klein [1930], 246.)

<sup>6</sup> There is a boom in articles about conscience in the post-war period. This is probably related to the practice of conscientious objection in the context of the Cold War, protests against the A-bomb, and, in the case of the United States, the war in Vietnam.

<sup>7</sup> Sturt (1896), 343.

himself seeks clarity by offsetting his own analysis against the popular view of conscience as a ‘divinely sent monitor’, a view that he calls ‘the external view’. He holds that “one’s everyday conscience must be a part or faculty of one’s very self. (...) We must drop the external view of conscience, and perhaps drop the term itself to a large extent, as suggesting externalism.” He then gives his view concerning the rejection of the notion of conscience by contemporary philosophers:

“It is due to these considerations that we hear but little of ‘conscience’ in recent works on moral philosophy. There is a very justifiable tendency to replace it by such terms as moral sense, moral faculty and moral ideal, none of which imply that the guiding principle of a man’s ethical judgment is anything independent of his personality. (...) It may be taken for granted now that conscience cannot be understood apart from the rest of our ethical experience.”<sup>8</sup>

Although Sturt still uses the notion of ‘faculties’, he moves away from a view of conscience as an agent independent from the person, an authority to be obeyed. He notes that “moral judgments are reached by a sort of intuition”, and emphasizes the relation between acts of moral judgement and the self. Together, “they may be seen to form a coherent, orderly system”, and “to explain this regularity and permanence of the moral functions, we must suppose that in the mind of each of us there exists a sort of permanent moral structure”.<sup>9</sup> He explains this in terms of a ‘personal moral ideal’, which regulates our conduct. “[B]oth the influence of our environment and the native systematising instinct of the mind”, urging us to be consistent, “induce us to round off our moral ideal and bring all its parts to harmony and order.” The moral ideal can be ignored; one can choose to identify oneself with it, or to reject it. This is why “[t]he voice of conscience needs to be reinforced by the voice of self-interest”.<sup>10</sup> This is a pretty down-to-earth view of conscience. It does not insist on the objectivity of conscience; it does not see conscience as some mysterious faculty, but recognizes the influence of socialization; it is not naive with regard to the efficacy of conscience. In fact, making conscience more or less a function of the self, it comes close to Luhmann’s concept of conscience. In its intuitionist aspect, it is a precursor of those (early) twentieth-century ethicists that would be alone in using a concept of conscience, namely the ethical intuitionists.<sup>11</sup>

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<sup>8</sup> Ibid., 344.

<sup>9</sup> Ibid., 344, 346.

<sup>10</sup> Ibid., 351.

<sup>11</sup> Among them are H.A. Prichard and G.E. Moore. Ethical intuitionism also goes back to the moral sense theories. Moore is only an intuitionist with respect to moral *ends*, not particular judgements; we are able to intuit what is good in itself, what ought to *be* – not what we ought to *do*. See Moore (1988), chapter V, § 90.



And there were other concepts. In 1892, C.N. Starcke spoke of conscience as a ‘feeling of a particular kind’.<sup>12</sup> He also defined it as “our sensibility to what others have good reason to think about us”, and as “our consciousness of conformity to (...) that part of [the moral code (the whole sum of our experience, accumulated and sifted through the ages, of what constitutes a good reason why our fellow-men should be satisfied or dissatisfied with us)] which has impressed our intelligence”.<sup>13</sup> In its distinction between the actual satisfaction of others and their having good reasons to be satisfied by your conduct, Starcke’s view is reminiscent of Smith’s. However, with his concept of a ‘good reason’, which he defines as “one founded upon the real, fully perceived character of our actions, and in our full apprehension of the laws according to which men are pleased or displeased”, he built into his theory an assumption of attainable objectivity which (from a purely functionalist perspective, at any rate) is problematic.

### 7.1.3. John Dewey

The greatest exception, in the English language area, to the ‘rule’ that the more important philosophers did not bother to think about the concept of conscience, is John Dewey (1859-1952). He wrote most extensively on conscience in his *Outlines of a Critical Theory of Ethics* (1891), but the concept remains of importance in his later work.<sup>14</sup> Dewey starts out by saying that

“[t]he practical consciousness, or the recognition of ends and relations of action, is what is usually termed *conscience*. The analysis of conscience shows that it involves three elements, which may be distinguished in theory, although they have no separate existence in the actual fact of conscience itself. These three elements are (1) the knowledge of certain specific forms of conduct, (2) the recognition of the authority or obligatoriness of the forms, and (3) the emotional factors which cluster about this recognition.”<sup>15</sup>

He goes on to say that “[c]onscience in this sense is no peculiar, separate faculty of mind”.<sup>16</sup> Dewey rejects a faculty view of conscience, but this does not lead him to reject the concept altogether. Instead, he redefines it: conscience “is simply intelligence dealing with a certain subject-matter”; it “is distinguished not by the kind of mental activity at work, but by the kind of material the mind works upon. Intelligence deals with the nature and relations of things, and we call it understanding; intelligence deals with the

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<sup>12</sup> Starcke (1892), 348.

<sup>13</sup> *Ibid.*, 371.

<sup>14</sup> See, for instance, Dewey (1985), chapter 5: “From Custom to Conscience”, and chapter 14, § 4: “Conscience and Deliberation”; see also Dewey (1980).

<sup>15</sup> Dewey (1969), part 3, chapter 1: “The Formation and Growth of Ideals”, 354.

<sup>16</sup> *Ibid.*, 355.

relations of persons and deeds, and it is termed conscience.”<sup>17</sup> This is problematic for a number of reasons, which I will not all enumerate here. One problem is that it simply appears to be empirically false to say that as soon as ‘intelligence’ deals with a specific subject matter, it is (called) conscience. One can think about the same subject matter in different ways; it is possible to contemplate ‘the relations of persons and deeds’, even the relations of oneself to one’s own deeds, in a fairly disinterested manner – this is not conscience.<sup>18</sup> It is also possible to do so in an interested or concerned manner that is still not conscience. Most moral reasoning involves a certain degree of concern, of involvement, but that does not mean it involves (or occurs in) conscience. Finally, it is possible to think about these things in a particular way, with a specific form of concern that would be called conscience. So we can have (more or less interested) *consciousness* of things, and we can have *conscience* of the same things; we can be *conscious* of them, or, we might say, *conscient*. That is not to say that we can be conscient of everything we can be conscious of; consciousness is the broader notion, so we *can* be simply conscious of everything we can be conscient of. It is true, then, that there is a difference between conscience and plain consciousness (if there is such a thing – maybe I should say: some other form of consciousness) on the level of subject matter. But subject matter is not a conclusive criterion to distinguish between the two. The *subjective form* of our awareness makes a crucial difference – *how* we are aware of the subject matter.

Dewey criticizes faculty views of conscience on several grounds: “Aside from the fact that large numbers of men declare that no amount of introspection reveals any such machinery within themselves, this separate faculty seems quite superfluous.”<sup>19</sup> This remark is followed by one that in some respects anticipates Ryle’s concept of conscience: “The real distinction is not between the consciousness of an action with, and without, the recognition of duty, but between a consciousness which is and one which is not capable of conduct.”<sup>20</sup> As soon as someone is able to conceive of an end to be realized, Dewey holds, he has an awareness of obligation, of duty. The ‘ought’ is simply part of the notion of ‘end’, of practical ideas. “The practical situation is itself an *activity* (...). But the agent, in order to determine his course of action in view of the situation, has to *fix* it (...). So his abstracting intellect cuts a cross-section through its on-going, and says “This *is* the

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<sup>17</sup> Idem.

<sup>18</sup> Psychopathology provides extreme examples of this possibility. See, for instance, Porter (1996) and Ramsay (2000). A ‘lack of conscience’ or a ‘defective conscience’, in this literature, is attributed to a lack of affective response, to an emotional disability; cognitive impairments may also lead to a ‘defective’ or ‘incomplete’ conscience, however; see Le Sage (2004), chapter 3.

<sup>19</sup> Dewey (1969), 360.

<sup>20</sup> Idem.

situation.’ Now the judgment ‘This ought to be the situation,’ (...) is simply restoring the movement which the mind has temporarily put out of sight.”<sup>21</sup> This practical orientation – which was to be expected from a pragmatist – also shows in his view of conscientiousness, which is for Dewey not a matter of prying into one’s own motives to see if they are pure, and with the object of retaining their purity, but ‘the habit of considering what ought to be done’.<sup>22</sup> It is not a *subjective*, but an *objective* ‘analysis’, by which Dewey means that it concerns conduct, not motives or ‘subjective states of emotion’. In his *Ethics*, he makes the same point:

“[G]enuine conscientiousness (...) is not an anxious prying into motives, a fingering of the inner springs of action to detect whether or not a ‘motive’ is good. Genuine conscientiousness has an objective outlook; it is intelligent attention and care to the quality of an act in view of its consequences for general happiness; it is not anxious solicitude for one’s own virtuous state.”<sup>23</sup>

I will not look into Dewey’s work in any more detail. It is interesting, with a view to the discussion of Ryle’s concept of conscience below, to see that Dewey moved in a somewhat similar direction in certain respects. But there is also an important difference between them. Dewey’s definition of conscience does not limit its area of application to the individual; his elaboration of the concept is such that we can infer that it has a peculiar relation to the self, but Dewey nowhere explicates this relation. For Ryle, on the contrary, the main question is: “Why can *my* conscience pass judgment only on *my* actions?”<sup>24</sup> His answer to that question will occupy us in 7.2.

#### 7.1.4. Martin Heidegger

In Germany (or in the German language), several books on conscience were published in the first half of the twentieth century. One major philosopher made use of a concept of conscience: Martin Heidegger (1889-1976). I have mentioned his concept of conscience before; it is ontological, rather than ethical, though it has ethical overtones. It is strikingly different from Dewey’s concept; whereas the latter’s is social (because conscience concerns conduct and the general happiness), Heidegger’s conscience is in a sense *anti-social*, in

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<sup>21</sup> Ibid., 361.

<sup>22</sup> Ibid., 364.

<sup>23</sup> Dewey (1985), 272-273. The aversion to the purely ‘subjective’, self-involved conscience has much to do with the Hegelian streak of Dewey’s work, which is clearly present throughout his ethical writings, and explicitly in Dewey (1969), 357-358, where a footnote is added to remark on his indebtedness to Hegel, and Hegel is quoted with approval: “To be moral is to live in accordance with the moral tradition of one’s country.”

<sup>24</sup> Ryle (1971), 185.

so far as by sociality we mean life in ‘das Man’. The Heideggerian (silent) ‘call of conscience’ is a call to authenticity, to take up one’s own life project. Heidegger’s ‘Gewissen’ is a good example of the interweaving of symbolic and conceptual language. In its symbolic aspect, it expresses what we might call a ‘romantic’ experience of conscience, reminiscent of Rousseau.

Heidegger explains that ‘Dasein’, the human way of being, is ‘lost’ (‘verloren’) in ‘das Man’. It needs to find itself, and for that purpose, it needs to be shown its possible authenticity (‘Eigentlichkeit’) first. “Das Dasein bedarf der Bezeugung eines Selbstseinkönnens, das es der *Möglichkeit* nach je schon *ist*.” The goal is a form of self-realization; ‘Dasein’ needs something to testify to the possibility of this self-realization; it needs something to *assure* it that this is possible. This assurance is almost a form of reassurance, without which Dasein could never bring itself to seek what in potentiality it already is. This (re)assurance comes from conscience; it is what “der alltäglichen Selbstausslegung des Daseins bekannt [ist] als *Stimme des Gewissens*”.<sup>25</sup>

He then addresses the problem of the controversiality, the disputed nature and existence, of conscience:

“Daß die ‘Tatsache’ des Gewissens umstritten, seine Instanzfunktion für die Existenz des Daseins verschieden eingeschätzt und das, ‘was es sagt’, mannigfaltig ausgelegt wird, dürfte nur dann zu einer Preisgabe dieses Phänomens verleiten, wenn die ‘Zweifelhaftigkeit’ dieses Faktums bzw. die seiner Auslegung nicht gerade *bewiese*, daß hier ein *ursprüngliches* Phänomen des Daseins vorliegt.”<sup>26</sup>

His ‘rein existenzialen Untersuchung’ of conscience ‘mit fundamental-ontologischer Absicht’ *precedes* any psychological study of the phenomenon, as well as any biological “‘Erklärung’, das heißt Auflösung des Phänomens”. It is equally distant, Heidegger maintains, from theological interpretations of conscience.<sup>27</sup> In his own terminology, he makes a similar point to that which I have been stressing in the foregoing chapters:

“Das Gewissen ist als Phänomen des Daseins keine vorkommende und zuweilen vorhandene Tatsache. Es *ist* nur in der Seinsart des Daseins und bekundet sich als Faktum je nur mit und in der faktischen Existenz. Die Forderung eines ‘induktiven empirischen Beweises’ für die ‘Tatsächlichkeit’ des Gewissens und die Rechtmäßigkeit seiner ‘Stimme’ beruht auf einer ontologischen Verkehrung des Phänomens. Diese Verkehrung teilt aber auch jede überlegene Kritik des Gewissens als einer nur zeitweise vorkommenden und nicht ‘allgemein festgestellten und feststellbaren Tatsache’. Unter solche Beweise und Gegenbeweise läßt sich das Faktum des Gewissens überhaupt nicht stellen. Das ist kein Mangel, sondern nur

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<sup>25</sup> Heidegger (1984), 268 (part 2, chapter 2, § 54).

<sup>26</sup> Idem.

<sup>27</sup> Ibid., 268-269.

das Kennzeichen seiner ontologischen Andersartigkeit gegenüber umweltlich Vorhandenem.”<sup>28</sup>

Conscience makes itself felt (or heard), so to speak, by making something else felt: it opens up the possibility of authentic existence, in contrast with the present inauthenticity. But, although it figures in experience – although it *is* experience – it belongs (in the terms I have used previously) to *insistent*, rather than *existent* reality. The common understanding of conscience, as well as existing theories of conscience, have always grasped *something* of the phenomenon, but (in my view) have always misunderstood their own relation to it, and have thereby misunderstood the phenomenon itself. Because of the difference between Heidegger’s concept of conscience and ordinary views, “bedarf die existenziale Interpretation der Bewährung durch eine Kritik der vulgären Gewissensauslegung”.<sup>29</sup>

Although Heidegger’s ‘Gewissen’ is not a moral but an ontological notion, Heidegger does relate himself to more traditional work on the subject; he mentions Kant, Hegel, Schopenhauer, and Nietzsche, and also M. Kähler, A. Ritschl, and H. G. Stoker, whose *Das Gewissen* was published in 1925. Willy Breimi, in his *Was ist das Gewissen?* (1934) discusses Heidegger’s concept of conscience in four pages, making just as much room for Heidegger’s concept of conscience as for Kant’s.<sup>30</sup>

‘Gewissen’ is an ontological notion; any moral conscience is only an ontic possibility, for which ‘Gewissen’ is the precondition. Conscience, for Heidegger, ‘erschließt’, ‘opens up’, “und gehört deshalb in den Umkreis der existenzialen Phänomene, die das *Sein des Da* als Erschlossenheit konstituieren”.<sup>31</sup> ‘Dasein’ loses itself in the ‘publicity of the They’, where it listens to the noise of the ‘Gerede’; this is when ‘Dasein’ must be brought back to itself, for which purpose it is called by conscience. ‘Dasein’ is personally addressed; the call calls forth a different kind of hearing, and it

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<sup>28</sup> Ibid., 269.

<sup>29</sup> Idem. For this, see § 59 (289-295). Cf. 271-272: “Die Betrachtung vermeidet von Anfang an den Weg, der sich zunächst für eine Interpretation des Gewissens anbietet: man führt das Gewissen auf eines der Seelenvermögen, Verstand, Wille oder Gefühl, zurück oder erklärt es als ein Mischprodukt aus diesen. Angesichts eines Phänomens von der Art des Gewissens springt das ontologisch-anthropologisch Unzureichende eines freischwebenden Rahmens von klassifizierten Seelenvermögen oder personalen Akten in die Augen.”; and 278: “Liegt der Grund der abwegigen ‘Erklärungen’ des Gewissens nicht am Ende darin, daß man schon für die Fixierung des phänomenalen Befundes des Rufes den Blick *zu kurz* genommen und stillschweigend das Dasein in einer zufälligen ontologischen Bestimmtheit bzw. Unbestimmtheit vorausgesetzt hat?”

<sup>30</sup> Breimi (1934), 153-157.

<sup>31</sup> Heidegger (1984), 270.

speaks in the mode of silence.<sup>32</sup> Heidegger then makes an interesting point: “Die Charakteristik des Gewissens als Ruf ist keineswegs nur ein ‘Bild’, etwa wie die *Kantische* Gerichtshofvorstellung vom Gewissen.”<sup>33</sup> The Kantian conception of conscience as a court of law is *just an image*. In other words: though it is a metaphor, it is not a symbol in the full sense of the word. Heidegger’s remark supports the reservations I made about the Kantian use of metaphor in chapter 5. The ‘Call’ of conscience Heidegger speaks of, the ‘Stimme des Gewissens’, is *not* a mere image. It must not be taken literally, either. The voice must be understood as the ‘Zu-verstehen-geben’. Conscience ‘gives something to understand’. But what?

In conscience, Dasein calls itself to itself, to its own ‘Selbstseinkönnen’; this is the peculiar characteristic of ‘Dasein’, that it *is* not merely, but that it *can* be, that it can make its being its own. What the Call opens up, Heidegger says, is unequivocal. It is only in the way it is heard that misunderstandings can arise, that it can be interpreted ‘inauthentically’.<sup>34</sup> That ‘Dasein’ calls itself, that the caller and the called are the same and yet different, is the reason why the voice of conscience has often been interpreted as that of a strange power. This interpretation has in turn be the subject of biological reductionist explanations.

“Beide Deutungen überspringen vorschnell den phänomenalen Befund. Erleichtert wird das Verfahren durch eine unausgesprochen leitende, ontologisch dogmatische These: was *ist*, das heißt so tatsächlich wie der Ruf, muß *vorhanden* sein; was sich nicht als *vorhanden* objektiv nachweisen läßt, *ist* überhaupt *nicht*.”<sup>35</sup>

This limited view of existence has led both to narrow concepts of conscience and to reductionist critique. But there is ‘being’ beyond ‘Vorhandenheit’. The Call of conscience is not that of a strange power, but that of ‘Dasein’ in its ‘Unheimlichkeit’ (‘uncanniness’), the ‘Dasein’ that is not at home in the world. This ‘Dasein’ calls ‘Dasein’ that is lost in the They in the uncanny mode of silence, and calls it back in the ‘Verschwiegenheit’ (‘taciturnity’, but also ‘secrecy’) of existent ‘Seinkönnen’. The Call is rooted in ‘Angst’, in anxiety; the uncanniness threatens the ‘selbstvergessene Verlorenheit’. So Heidegger comes to the following conclusion:

“*Das Gewissen offenbart sich als Ruf der Sorge: der Rufer ist das Dasein, sich ängstigend in der Geworfenheit (Schon-sein-in...) um sein Seinkönnen. Der Angerufene ist eben dieses Dasein, aufgerufen zu seinem eigensten Seinkönnen (Sich-vorweg...). Und aufgerufen ist das Dasein durch den*

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<sup>32</sup> Ibid., 271, 273.

<sup>33</sup> Ibid., 271.

<sup>34</sup> Ibid., 274.

<sup>35</sup> Ibid., 275.

Anruf aus dem Verfallen in das Man (Schon-sein-bei der besorgten Welt). Der Ruf des Gewissens, das heißt dieses selbst, hat seine ontologische Möglichkeit darin, daß das Dasein im Grunde seines Seins Sorge ist.”<sup>36</sup>

This is a highly important point. The ontological possibility of conscience lies in the fact that ‘Dasein’ is, in the ground of its being, ‘Care’. ‘Dasein’ is fundamentally characterized by a particular way of being interested in the world. As Whitehead said that the subject ‘has a concern’ for the object, so Heidegger characterizes the relation between ‘Dasein’ and (itself-in-the) world as fundamentally one of ‘Care’. “Das Sein des Daseins ist die Sorge.”<sup>37</sup> This ‘Care’ is a care for one’s own being as one’s *own*: “Der eigene geworfene Grund zu sein, ist das Seinkönnen, darum es der Sorge geht.”<sup>38</sup> ‘Dasein’ is ‘thrown’ in existence, it is ‘geworfen’, but it can also ‘design’ itself (‘entwerfen’); it is a ‘geworfenes Entwurf’. What conscience calls up to, is for ‘Dasein’ to take its own being in its own hands. It confronts ‘Dasein’ with its threatening freedom; it is through fear that ‘Dasein’ comes to know its freedom.<sup>39</sup> But “[i]n der Struktur der Geworfenheit sowohl wie in der des Entwurfs liegt wesentlich eine Nichtigkeit. (...) *Die Sorge selbst ist in ihrem Wesen durch und durch von Nichtigkeit durchsetzt.*”<sup>40</sup> ‘Dasein’ can only live some of its possibilities; its being entails the not-being of other (former) possibilities. This is in fact Heidegger’s version of the Christian doctrine of original sin – it is the meaning he gives to the concept of ‘guilt’. “Seiendes, dessen Sein Sorge ist (...), *ist im Grunde seines Seins schuldig.*”<sup>41</sup> This is the condition of possibility of what is ordinarily called ‘guilt’. It is also the precondition for conscience: “[N]ur weil das Dasein im Grunde seines Seins schuldig ist und als geworfen verfallendes sich im selbst verschließt, ist das Gewissen möglich, wenn anders der Ruf *dieses Schuldigsein* im Grunde zu verstehen gibt.”<sup>42</sup> ‘Dasein’ cannot be not-guilty. It can only be guilty *authentically*; it can choose itself.<sup>43</sup>

“Mit dieser Wahl ermöglicht sich das Dasein sein eigenstes Schuldigsein, das dem Man-selbst verschlossen bleibt. (...) Das Rufverstehen ist das Wählen – nicht des Gewissens, das als solches nicht gewählt werden kann.

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<sup>36</sup> Ibid., 277-278.

<sup>37</sup> Ibid., 284.

<sup>38</sup> Idem.

<sup>39</sup> Hence Breimi (1934), 153 and 156, points out the similarities between Heidegger on the one hand and Luther and Kierkegaard on the other.

<sup>40</sup> Heidegger (1984), 285.

<sup>41</sup> Ibid., 286.

<sup>42</sup> Idem.

<sup>43</sup> Ibid., 287.

Gewählt wird das Gewissen-*haben* als Freisein für das eigenste Schuldigsein. *Anrufverstehen* besagt: *Gewissen-haben-wollen*.”<sup>44</sup>

‘Dasein’ can appropriate its own guilt; make it its *own*. The choice for having-(a-)conscience is the choice to care, to be concerned. It is the basic commitment that makes it possible for people to have an ultimate concern. There is either this basic concern, or mere indifference.

Heidegger defines conscience as “der Ruf der Sorge aus der Unheimlichkeit des In-der-Welt-seins, der das Dasein zum eigensten Schuldigseinkönnen aufruft”.<sup>45</sup> From the perspective of ordinary interpretations of conscience Heidegger reverses what happens: the voice of conscience comes *after* the deed, and proclaims guilt that is *already there* – so how can it be an ‘Aufruf zu...’? Heidegger replies: “Daß die Stimme als *nachfolgende* Gewissensregung gefaßt wird, beweist noch nicht ein ursprüngliches Verstehen des Gewissensphänomens.” Ordinary interpretations do not probe deep enough. Kant defined conscience in different ways. According to one definition it belonged to the preconditions for the susceptibility for the concept of duty; similarly, Heidegger posits an ontological conscience *before* conscience as it is ordinarily understood, an ontological guilt *before* ‘ordinary’ guilt. There is a ‘Schuldigsein’ before ‘jede Verschuldung’, and at the same time the ‘Schuldigsein’ *follows* the Call, instead of preceding it. It is only appropriated *after* the Call; this is what was called for.

When Heidegger summarizes the relation between conscience and the ‘existentials’ of ‘Befindlichkeit’, ‘Verstehen’, and ‘Rede’, he introduces one more notion that is worth considering:

“Die im Gewissen-haben-wollen liegende Erschlossenheit des Daseins wird demnach konstituiert durch die Befindlichkeit der Angst, durch das Verstehen als Sichentwerfen auf das eigenste Schuldigsein und durch die Rede als Verschwiegenheit. Diese ausgezeichnete, im Dasein selbst durch sein Gewissen bezeugte eigentliche Erschlossenheit – *das verschwiegene, angstbereite Sichentwerfen auf das eigenste Schuldigsein* – nennen wir die *Entschlossenheit*.”<sup>46</sup>

‘Entschlossenheit’ (‘resolve’, ‘resoluteness’, ‘firmness’, ‘purposefulness’) is a mode of ‘Erschlossenheit’ (‘openness’). It is ‘eigentliche Erschlossenheit’; ‘Dasein’ affirms its openness, and takes its own being upon itself. The ‘Entschlossenheit’ does not isolate ‘Dasein’ from its world; rather, it “bringt das Selbst gerade in das jeweilige besorgende Sein bei Zuhandenem und

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<sup>44</sup> Ibid., 288.

<sup>45</sup> Ibid., 289.

<sup>46</sup> Ibid., 296-297.



stößt es in das fürsorgende Mitsein mit den Anderen”.<sup>47</sup> ‘Entschlossenheit’, then, is the term which represents the element of *inspiration* in Heidegger’s symbolic conceptualization of conscience: “Die Entschlossenheit zu sich selbst bringt das Dasein erst in die Möglichkeit, die mitseienden Anderen ‘sein’ zu lassen in ihrem eigensten Seinkönnen (...). Das entschlossene Dasein kann zum ‘Gewissen’ der Anderen werden.” ‘Entschlossenheit’ does not entail certainty with respect to the course to take. “Zur Entschlossenheit gehört notwendig die *Unbestimmtheit* (...). Ihrer selbst sicher ist die Entschlossenheit nur als Entschluß.”<sup>48</sup> This double-sidedness, this combination of certainty and uncertainty, is also, as I will explain in the chapter on “Aspects of Conscientious Objection” in part III, an essential characteristic of conscience and conscientious objection. ‘Entschlossenheit’ is a part of conscience; by definition, it requires (or embodies) courage – in Tillich’s words: ‘the courage to be’.<sup>49</sup>

## 7.2. GILBERT RYLE

It is hard to assess Heidegger’s influence on (popular) thought on conscience, though one can see how a popularized version of his concept of conscience may have been at the back of many a conscientious objector’s mind. The indebtedness of philosophical concepts of conscience to Gilbert Ryle is at least more often explicitly admitted.<sup>50</sup> Langston even claims that “[h]is essay has been definitive in modern philosophical discussions about conscience”.<sup>51</sup> I would not know about that, but it is clear enough that the road Ryle takes is, in a general sense, that taken by most authors on the subject after him: the road of functionalism. Ryle shifts attention away from the contents of conscience, towards its function and its formal

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<sup>47</sup> Ibid., 298.

<sup>48</sup> Idem.

<sup>49</sup> See Tillich (1970), 15: “The courage to be is the ethical act in which man affirms his own being in spite of those elements of his existence which conflict with his essential self-affirmation.”

<sup>50</sup> Bernard Wand (1961) takes Ryle and Broad as the starting-points for his own discussion of conscience. McGuire (1963), 258, refers to Ryle when he says that “it is essential to our notion of conscience that a man’s conscience has to do exclusively with his own acts”. Childress (1979), 319, note 10, refers to Ryle in support of his own view that “conscience does not so much indicate that an act committed is wrong, as that an act ‘known’ (...) to be wrong, has been committed”. Many other concepts of conscience may have been influenced by Ryle, but he is not mentioned by (for instance) Jenkins, Fuss, or Rotenstreich; nor does his name appear in Bahm (1965), Olson (1959), and Earle (1970). Luhmann, though he does use English and American literature, does not mention Ryle either.

<sup>51</sup> Langston (2001), 92.

characteristics. It is not merely a shift of attention, for traditional notions related to conscience are redefined – most notably that of *authority*.

### 7.2.1. Ryle's concept of conscience

Ryle's "Conscience and Moral Convictions" was originally published in *Analysis*, in 1940. The main question Ryle tries to answer is: "Why can *my* conscience pass judgment only on *my* actions?"<sup>52</sup> The reason why he asks this question is remarkable: he says that he "had always vaguely supposed that 'Conscience' is ordinarily used to signify any sort of knowledge or conviction about what is right and wrong"; but then, dealing with moral sense theories and 'intellectual theories like those of Kant and Price', he "noticed that 'conscience' is *not* used in this way. We limit the verdicts of conscience to judgments about the rightness or wrongness of the acts only of the owner of that conscience."<sup>53</sup> In English, 'conscience' *is* sometimes used in that very general way Ryle describes, but it seems that Ryle had missed out on the more particular meaning of the term, and the huge tradition behind it. His conclusion that the term is *not* used in that general way is wrong, but the more exclusive meaning is both more important historically, and more interesting.<sup>54</sup> That traditional interpretations of conscience had escaped Ryle's notice means that he can approach the subject from a fresh angle. When he sets out to answer the above question, he does not resort to traditional explanations.

His answer is as follows. First, he rules out that the difference between judging oneself and judging others, in the latter case of which one cannot say that one's conscience (dis)approves of the conduct of others, is a difference between "my having *knowledge* of myself and only *opinions* about other people. If God is omniscient it would still be absurd to say that *his* conscience chided me for my behaviour."<sup>55</sup> Verdicts of conscience, rather than recording moral sense perceptions, are applications of general rules, imperatives or codes. They depend on a person holding these principles, having certain convictions. Now, according to Ryle, one can have convictions in degrees; that is, one can be convinced of something to a greater or lesser degree. One can accept a certain principle, without being moved to action by it. On the other hand, *real* acceptance of a principle seems to imply that it *does* motivate one to a certain kind of behaviour. When a principle is 'part of someone's intellectual furniture' but 'not of his real nature'; when "[i]t is not operative on his volitions, emotions, and behaviour

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<sup>52</sup> Ryle (1971), 185.

<sup>53</sup> *Idem*.

<sup>54</sup> Ryle is also wrong when he says that "[w]ith the Reformation (...) 'Conscience' began to have the narrower meaning of the knowledge by self-inspection of *my* duties and faults" (186).

<sup>55</sup> *Idem*.

(...) this is rather fishy.”<sup>56</sup> “So,” Ryle says, “there seems to be a sense in which *real* acceptance of a principle (does not lead to, but) *is* being disposed to behave in accordance with it. To ‘know’ a rule of conduct *is* to be regulated in one’s conduct.”<sup>57</sup> Ryle suggests: “let us label as ‘operative’ the knowledge or conviction which manifests itself in the disposition to behave (...) in accordance with the principle which is said to be known or accepted”.<sup>58</sup> Here lies the answer to Ryle’s initial question, for I cannot have an operative conviction about someone else’s duty. My conviction “cannot issue in the required behaviour” – at least not directly.<sup>59</sup>

An internal conflict may arise when someone experiences an impulse contrary to an operatively accepted principle. In this case “there will not only exist a conflict between the temptation and the abstract principle; there will be actually experienced a conflict between the temptation and the disposition which is the operatively accepted principle. He will feel a tension because he *is* the two tendencies to act that are in conflict. (...) His knowledge or conviction of the principle is not an external censor but an internal competitor.”<sup>60</sup>

This means that conscience is not merely a judge of conduct, but a ‘conduct-regulating faculty’. Here Ryle shows the same practical orientation we saw with Dewey – or even a stronger one. It has direct consequences for the meaning of ‘authority’:

“We credit conscience with *authority* as well as with knowledge. That is, we use the word ‘conscience’ for those moral convictions which issue not in verdicts but in behaving or trying to behave.”<sup>61</sup>

‘Authority’ loses its traditional meaning in Ryle’s concept of conscience – or it retains only one of its aspects. It is not a matter of *right*: conscience does not have the *right* to demand obedience; it has not proven itself an infallible or even a trustworthy moral expert; it is not divinely placed at the top of a hierarchy of human principles – it is solely a matter of *power*. For Darwin, as we have seen, the authority of conscience was a matter of its being a more forceful or a more enduring principle; for Ryle, it is a matter of the power to influence conduct. But one does not actually *obey* conscience – one has it, and this means one is disposed to act in certain ways. To say that conscience has authority is to make the analytical judgement that conscience is not academic knowledge, but conviction embodied in behaviour and dispositions to behave in certain ways:

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<sup>56</sup> *Ibid.*, 187.

<sup>57</sup> *Idem.*

<sup>58</sup> *Ibid.*, 187-188.

<sup>59</sup> *Ibid.*, 188.

<sup>60</sup> *Idem.*

<sup>61</sup> *Idem.*

“Conscience is not something other than, prior to or posterior to moral convictions; it is having those convictions in an operative degree, i.e. being disposed to behave accordingly. And it is active or calls for attention when this disposition is balked by some contrary inclination. Conscience has nothing to say when the really honest man is asked a question and when he has no temptation to deceive. (...) Conscience is awake only when there is such a conflict. The test for the existence of such a conflict is the occurrence of attention to the problem of what is to be done. Pangs or qualms of conscience can occur only when I am both disposed to act in one way and disposed to act in another and when one of these dispositions is an operative moral principle.”<sup>62</sup>

Ryle draws attention to the fact that much of our behaviour is habitual. We go about our business without reflection or special attention, so long as the activity of the autopilot is not disturbed. In Heidegger’s example, we use a hammer without *noticing* the hammer, without *attending* to it – until the hammer breaks, its utility is gone, and our activity interrupted. Only then do we focus our attention on the hammer. In Polanyi’s terms: the hammer comes in focal awareness only once it has lost its meaning as a hammer. Similarly, conscience is ‘awake’ or ‘active’ only when its operation is counteracted. This is an interesting observation. It would seem that it would have to commend itself to an advocate of a virtue-ethical approach to conscience like Douglas Langston, but he does not pick up on this point. Traditional concepts of conscience emphasize(d) its negative function. A ‘good conscience’ was often defined as the (blissful) absence of a bad one, though sometimes in more positive terms. The emphasis on the negative function of conscience, on its tendency to manifest itself when something goes or went wrong (or some wrong was [about to be] *committed*), may be explained in Ryle’s terms: as long as everything runs smoothly, you do not really notice the movement; it is when there is a bump in the road, or an engine problem, that we become aware of it. Only then does one ‘consult’ one’s conscience:

“Consulting my conscience entails attending introspectively to my conflicting dispositions to act. Hence I cannot (logically) consult my conscience about what you are to do. Having a conscience to ‘consult’ is having a (partially) operative moral conviction.”<sup>63</sup>

Once more Ryle answers his initial question. His answer implies that a perfectly *good* (wo)man would never experience an active conscience – unless,

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<sup>62</sup> Ibid., 189.

<sup>63</sup> Idem.

perhaps, in tragic situations. The same, I suppose, goes for the perfectly *bad* (wo)man.

He goes on to discuss other kinds of convictions, which also dispose one to certain kinds of behaviour. This leads to the idea that “conscience (...) is one species, among others, of scrupulousness; and scrupulousness is the operative acceptance of a rule or principle which consists in the disposition to behave, in all modes of behaviour (...) in accordance with the rule.”<sup>64</sup> The discussion of scrupulousness parallels that of conscience.

### 7.2.2. Critical remarks<sup>65</sup>

That Ryle was unfamiliar with the traditional meaning of ‘conscience’ (as applying only to one’s own acts and thoughts) has a disadvantage as well as the aforementioned advantage. It has the consequence that Ryle is unaware of the loss of meaning that occurs in his concept. For what he does is that he reduces the meaning of ‘conscience’ to that of a combination of other terms: ‘having moral convictions in an operative degree’. Bergson wrote that “[a]nalyzing (...) consists in expressing a thing in terms of what is not it” – no analysis escapes this. This means, however, that the analyst should be aware of the reduction and the consequent loss of meaning that occurs. If Ryle had said that ‘having moral convictions in an operative degree’ is an *aspect* of conscience, it would have been much less problematic.<sup>66</sup> His reduction of the once so exalted conscience to the down-to-earth ‘having moral convictions in an operative degree’ is unsurprising in view of the myth-busting Ryle engaged in in his *The Concept of Mind*. Just as there is no ‘Ghost-in-the-Machine’, there is also no mysterious faculty of conscience, an infallible

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<sup>64</sup> Ibid., 191.

<sup>65</sup> Langston (in chapter 6) is highly critical of Ryle, but most of his criticism is misplaced. He mistakenly puts Ryle down as a follower of Freud with regard to his concept of conscience; then, he says that “Ryle is not consistent in following this Freudian tack” (96). I will point out some other mistakes, without arguing for the fact that they are indeed mistakes: Langston misinterprets Ryle’s ‘answer’ to the question (that Ryle does not really ask himself) why Ryle thinks that conscience is a form of scrupulousness (94; see Ryle [1971], 191). Secondly, he sees ‘striking dissimilarities’ between scrupulousness and conscience that do not exist (95; Ryle [1971], 189 and 191). Thirdly, he claims that on Ryle’s view, one cannot act against one’s conscience, which is nonsense (96). His statement that “it is not surprising that Ryle finds little interest in classical problems about following one’s conscience” is therefore equally nonsensical. Finally, his claim that later discussions of conscience base the view that it has only personal authority on Ryle’s arguments not only cannot be proven, but is simply implausible in the extreme (98).

<sup>66</sup> Ryle *is* aware that he did not discuss the subject exhaustively, as is clear from his remark that he did not try “to show what the differences are between conscience and other sorts of scrupulousness” (193).

source of moral knowledge. There are only moral convictions, and when these are operative in a person, this person has a conscience.

Though myth busting is in itself a respectable line of business, Ryle's concept of conscience is not without its problems. With his functionalistic concept of conscience – functionalistic in presenting conscience as a 'conduct-regulating faculty' – Ryle is able to deal with the problem of the diversity of the dictates of different consciences. As people have different moral convictions, so they have different consciences. Apart from seeing conscience as a *moral* phenomenon, Ryle eschews any reference to the *content* of conscience. Conscience is not a source of moral knowledge; it is having moral convictions in an operative degree. But what counts as a moral conviction? Ryle is silent on that point. His concept of conscience provides accommodation for whatever 'moral' principles people come up with. The question is whether that does not stretch the concept beyond plausible limits. If both Gandhi's conscience and that of a Nazi, responsible for the death of millions of Jews, can indeed pass under the same heading, how much have we learned about conscience?<sup>67</sup> And if we are willing to use the same term for both, we must explain the difference between the two in some other way.

Another problem arises because Ryle identifies conscience with (partly) *operative* moral convictions, with *dispositions* to behave in a certain way. But it does not seem to be true that conscience is only active when a real *disposition* is "balked by some contrary inclination".<sup>68</sup> Imagine someone who, every time he finds himself in a particular kind of situation (which does not occur too often, but with larger intervals), does the wrong thing and feels guilt or remorse about that, and resolves to do better next time. Yet, next time, he once again does the wrong thing, and feels guilt et cetera. This does not seem very far-fetched to me; on the contrary, I believe this is quite conceivable. Now, in this situation, one can hardly say that this person has a *disposition* to do what would be the right thing in the situation in question – in fact, he *never does* the right thing. What he does have, is a clear idea about what is right and, more generally, about what kind of person he wants to be (or so one might assume). Because the situation does not occur too regularly, he does not get used to doing the wrong thing, so that his conscience does not get 'blunted'. Instead, his conviction about what is right and his resolve to do the right thing next time get the time to build up and gain strength again – though never enough to actually make him do the right thing. In conclusion, conscience is not necessarily connected with what we would ordinarily call a disposition. Ryle's concept of conscience is too narrow in this respect.

A further question is whether we should use the term 'conscience' for habitual behaviour, as Ryle does. The 'really honest man' Ryle talks about

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<sup>67</sup> Himmler's conscience would be a case in point; see Bennet (1994), 299-300.

<sup>68</sup> Ryle (1971), 189.

has operative moral convictions, and therefore a conscience. But, in Ryle's terms, this conscience is not active (or awake). He adduces another example: "God would calculate (if at all) with 100% scrupulousness and 0% scruples. Similarly, he would always do the right thing and would never wonder what he ought to do. He would never consult his conscience and would never have pangs of conscience."<sup>69</sup> But would it make sense to say he had a conscience at all? Did not the symbol of conscience arise exactly because of the experience of a *divergence* between conduct (or thoughts) and a standard of conduct? And should we not reserve the term 'conscience' for the situation in which someone in some (not necessarily cognitive) manner *attends* to his or her own conduct or thoughts? Whitehead described consciousness as a 'mode of attention'; in the next chapter I will conceptualize conscience (as other authors have done) as a mode of consciousness – hence, conscience is also a mode of attention. Does the moral saint, who never has reason to attend to what he does because he does 'the right thing' *habitually*, have a 'sleeping' conscience, ready to wake up in the inconceivable situation that the moral saint will some day at least hesitate about what to do? It would be odd to claim that. But if we ignore Ryle's example of God, it seems that he might have a point. He appears to agree (more or less) that conscience is a mode of attention; for Ryle, to say that conscience is active is to say that it calls for attention. In so far as (in non-saints) behaviour is habitual, it is not a matter of active conscience – which is not to say that conscience did not play a role in the formation of these habits, for it is likely that it did. But in the case of non-saints (that is: people like you and me) it makes sense to speak of a 'sleeping' conscience. In our case, the possibility that our dispositions are 'balked by some contrary inclination' always lurks in the background. When such a conflict actually occurs, conscience is immediately aroused; this potentiality was always already inherent in the situation. Hence, for ordinary people, it makes sense to speak of (an inactive) conscience also in relation to habitual behaviour – because with the kind of creature we are, a habit is never a guarantee for a certain kind of conduct.

A final remark I would like to make is that the 'pangs or qualms of conscience' Ryle mentions are a very specific sort of emotion or feeling. Why would this specific emotion occur when certain dispositions are balked? The answer that suggests itself is: because the dispositions stem from *moral* convictions. With other forms of scrupulousness, other emotions will occur. But what makes the moral so special? Ryle does not address this question. Nor does he ask whether conscience is a more *important* form of scrupulousness than that relating, for instance, to a sense of decorum. To me, it seems essential to a concept of conscience that it addresses these questions.

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<sup>69</sup> *Ibid.*, 191.

### 7.3. NIKLAS LUHMANN

Social theorist Niklas Luhmann wrote three articles on the subject of conscience, which together present a consistent functionalist view of conscience, and the most systematic elaboration of a concept of conscience in the twentieth century.<sup>70</sup> He is of the opinion that the old, substantialist concepts of conscience need to be discarded in favour of a functionalist concept that does not suffer from the limitations imposed on it by a particular (religious) morality. He makes clear that he wants to counter subjectivist tendencies, when he points out what confusion arises from the idea of conscience as an inner Voice one can heed, but also ignore:

“Das Bundesverwaltungsgericht trennt auf Grund dieser Vorstellung (...) scharf zwischen Gewissensentscheidung und faktischem Verhalten und meint, daß Gewissensentscheidungen auch dann beachtet werden müßten, wenn der Betreffende aus Willensschwäche oder Bequemlichkeit (!) nicht nach ihnen lebe.”<sup>71</sup>

Such a suggestion sends shivers across Luhmann’s spine (and from what I have said about Ryle, it is clear that similar shivers would visit his spine). The *Bundesverwaltungsgericht*, in this particular case, completely delivered itself up to the caprice of the individual. Luhmann’s concept of conscience does not allow such foolishness.

#### 7.3.1. Conscience as a function

In two of the three articles Luhmann wrote on the subject, he wrote about conscience in the context of a discussion on *freedom* of conscience. In the German debate on that topic, Luhmann’s texts would prove to be a definitive turning point. In this section, I will be concerned with his concept of conscience only, not with his view of freedom of conscience, which will figure in part II, chapter 11.

The first thing to do is to see what the ontological status of conscience is in Luhmann’s view, for this is where his concept (like other functionalist concepts) departs most radically from ‘the’ tradition of thought on conscience. ‘Old’ theories of conscience referred to it as a ‘moral sense’ or ‘moral faculty’, or assigned a special ‘place’ for it in some other way. It acquired the shape of a separate ‘entity’. In Luhmann’s theory, conscience is

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<sup>70</sup> Two of them have been mentioned. The third one is: Luhmann (1970).

<sup>71</sup> Luhmann (1965), 285. [On the basis of this idea the *Bundesverwaltungsgericht* (highest administrative tribunal) sharply distinguishes between dictate/decision of conscience and actual behaviour and thinks that dictates/decisions of conscience should be taken into account, also when the person involved, either due to weakness of will or for reasons of convenience (!), does not live by them.]



no such thing. We can no longer, Luhmann states, view conscience as part of the eternal ‘nature’ of man and as an organ of natural moral knowledge.<sup>72</sup>

“Das Gewissen ist nicht eine Stimme, sondern eine Funktion.”<sup>73</sup>

That conscience ‘is’ a function, is shorthand for: “ ‘conscience’ is the name we give to a certain function that is fulfilled by our consciousness”. When Luhmann speaks of conscience as a “Kontrollinstanz” [supervisor / control agency], he may seem to give more ‘body’ to it, but this is surely not his intention. It is simply almost impossible to speak of conscience in another way. Therefore, we must keep in mind that for Luhmann, conscience is not a separate entity, but a reflective function.

It is a function of the personality. The phenomenon of conscience lies “im Bereich derjenigen Strukturen und Prozesse (...) die zur *Selbstidentifikation der Persönlichkeit* beitragen”.<sup>74</sup> This self-identification can be described as the “Konstitution eines besonderen Systems in einer Umwelt mit der Möglichkeit, Grenzen zu ziehen, Handlungen zuzurechnen und Erleben reflexiv auf die eigene Identität zu richten”.<sup>75</sup> In connection with this, conscience is defined as

“jene normative Selbstbestimmung der Persönlichkeit, die diese gegenüber einem Überschuß an organischen und psychisch-möglichen Verhaltenspotentialen als Steuerungssystem konstituiert”.<sup>76</sup>

In a social context, personal identity arises of necessity, due to 1) the fact that persons are confronted with an infinity of possibilities, from which they have to chose, and 2) the patterns of expectation of the social environment. There is a social demand for unity, continuity and consistency in the behaviour of individuals, a demand that is conjoined with approval of integrity.<sup>77</sup> Besides that, self-identification is a form of ‘Sinnbildung’

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<sup>72</sup> Luhmann (1973), 233.

<sup>73</sup> Luhmann (1965), 285. [Conscience is not a voice, but a function.]

<sup>74</sup> Luhmann (1973), 224. [in the range of those structures and processes (...) that contribute to the *self-identification of the personality*.]

<sup>75</sup> Idem. [constitution of a special system within an environment with the potentiality of drawing boundaries, attributing acts and turning experience reflexively towards the own identity.]

<sup>76</sup> Ibid., 232. [that normative self-determination of the personality, that constitutes this personality as steering system over against a surplus of organic and psychic-possible potentialities for acting.]

<sup>77</sup> In this respect, Luhmann’s account of the origin of the phenomenon of conscience resembles that of Adam Smith and Charles Darwin. Where Luhmann speaks of ‘Achtung’ as lying at the basis of morality – a view that is presented as a

[construction of meaning]. That means that there is also a personal motivation to strive for integrity.

The function of conscience (read: the function *we call* conscience) is to guard the identity and integrity of its owner. An analysis of the concept of integrity falls beyond the scope of this article. A thorough analysis is provided by A.W. Musschenga, in his article “Integrity – Personal, Moral, and Professional”.<sup>78</sup> For the present purpose, Luhmann’s terminology suffices. Conscience makes sure that “das Ich die Grenzen seiner Persönlichkeit nicht sprengt”, or at least not without serious consequences.<sup>79</sup>

“Kann ich so handeln? oder: wie konnte ich so handeln? – das sind die Fragen des Gewissens.”<sup>80</sup>

In other words, conscience entails the question: ‘Can I identify myself with this (past, present or future) action?’; ‘Can I do this and still be me?’.<sup>81</sup> These are reflective questions; ‘the I’ takes the stance of ‘the other’, to measure itself against its own biographical standard, that includes ideals – who ‘the I’ desires to be. Luhmann identifies the function of conscience as lying in the “symbolic fixation and frustration-proof preservation of certain abstraction levels of the personality”, and in the “normative support and, with respect to contents, consistent molding of Ego/Alter integrations, that are anchored in the self-identification”.<sup>82</sup> This does not mean that conscience reflects on every action and every decision: “Es deckt keineswegs den gesamten Bereich der ‘internalisierten’ sozialen Normen und Habitualitäten.”<sup>83</sup> Conscience is concerned solely with actions and decisions that might put a person’s identity at stake. When someone is inclined to act in a way that is not compatible with who this person is and desires to be, his conscience will stir. There are

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consequence of his concept of conscience, Darwin and Smith speak of approval and disapproval, in combination with sympathy.

<sup>78</sup> In: Musschenga et al. (eds.) (2002).

<sup>79</sup> Luhmann (1965), 264 [the I does not exceed the boundaries of its personality].

<sup>80</sup> Luhmann (1973), 235.

<sup>81</sup> Cf. Luhmann (1973), 231: “Die Kontrolle am Gewissen weist sich darin aus, daß man sich selbst vor die Frage stellt, ob man derselbe bleiben kann.” In a sense, Luhmann presents us with an *ontic* version of Heidegger’s concept of conscience; the Luhmannian conscience is concerned with authenticity on an ontic, rather than an ontological level. While the Heideggerian conscience conserves ‘true humanity’, one might say, the Luhmannian conscience is conservative in a more concrete sense; it tries to conserve a person’s identity. In this more concrete sense, the Heideggerian conscience is rather the opposite of conservative.

<sup>82</sup> Luhmann (1973), 235. On the Ego/Alter dialectic, see 225.

<sup>83</sup> *Ibid.*, 231.

then two possibilities: “mit Hilfe der Gewissen-Standards die biographischen Fakten oder mit Hilfe dieser Fakten die Standards zu überprüfen”.<sup>84</sup>

Self-definition, the building of one’s personality, proceeds by the reduction of possible ways of acting. Our physical and mental possibilities are far greater in number than the actions we allow ourselves to engage in. Luhmann points out that there is a difference between the organic and the personal system, which is most clearly perceived by the individual in the experience of death – first of all the death of others, and in the wake of that the possibility of his own death. It becomes clear to the individual that the intersubjectively constituted world-horizon will outlive him. “Das ermöglicht es (...) den Sinn des eigenen Lebens unabhängig von der Fortdauer des Lebens zu bestimmen.”<sup>85</sup> We have seen that self-identification, with which the function of conscience is closely connected, is a form of ‘Sinnbildung’. From this perspective, it becomes understandable that the discrepancy between the organic and the personal system can reach such heights, that the latter comes to consider destroying the former. “Das Gewissen bezieht sich auf personale, nicht auf organische Identität und ist daher in der Lage, den eigenen Tod zu erwägen.”<sup>86</sup> But then this possibility has to be present, of course. Therefore, Luhmann states that “Gewissen kann nur haben, wer sich selbst töten kann”.<sup>87</sup> The possibility of suicide is the ultimate safeguard of human freedom. Killing oneself (one’s organic self) may be the only way to avoid acting against one’s conscience. But the death of one’s personal self is another possibility. In a decision of conscience, an individual may radically reject his own past, and start anew.

“Im Gewissen entdeckt das Ich sich im Besitz seiner vollen Möglichkeiten: als potentieller Feind seines schon geformten Selbst, als drohende Zerstörung seiner Persönlichkeit. (...) Es muß zur Erhaltung des Sinnes der eigenen Persönlichkeit die Potentialitäten des Ich reduzieren, im Grenzfall über den Tod des Ich verfügen können.”<sup>88</sup>

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<sup>84</sup> Ibid., 236 [to revise the biographical facts with the help of the standards of conscience, or the standards with the help of these facts].

<sup>85</sup> Ibid., 231. [That makes it possible (...) to determine the meaning of one’s life independently from the continuance of life.]

<sup>86</sup> Idem. [Conscience is related to personal, not to organic identity and is therefore able to consider its own death.]

<sup>87</sup> Luhmann (1965), 269 [only who can kill himself, can have a conscience].

<sup>88</sup> Ibid., 270. [In conscience, the I discovers itself in possession of its full capacities: as potential enemy of his already formed self, as threatening destruction of its personality. (...) To preserve the meaning of the own personality it has to reduce the potentialities of the I, (and) in extreme cases have the death of the I at its disposal.]

### 7.3.2. Critical remarks

Inherent in many concepts of conscience is the mistaken idea that the concept states all there is to say about conscience. Luhmann, however, realizes that his concept of conscience was a concept from a particular perspective. Nor does he see his concept as correcting earlier, mistaken concepts. He understands that the kind of concept of conscience he propounds is the kind that fits a certain kind of social and psychological organization. His approach is necessitated by social developments, not by the inherent inadequacy of earlier concepts. They have either been *rendered* inadequate by changes in the structure of society and corresponding changes in individual psychology, or they fulfil another *function*, emphasizing other aspects of conscience.<sup>89</sup> That is the general way in which Luhmann presents his own concept. On one occasion, however, Luhmann forgets himself and pretends that his functionalist view reveals what conscience *really* is, as opposed to the common use of the term, which “als eine euphemistische, honorifizierende, werbende Bezeichnung dient für Steuerungseinrichtungen, die in einer bestimmten Lage der gesellschaftlichen Entwicklung unentbehrliche Funktionen übernehmen”.<sup>90</sup> This reductionist view does not reappear in the 1973 article, where he does not forget, as he does here, that he looks at things through functionalist glasses. On this one occasion, Luhmann seems to think that he is the only one *not* wearing glasses, or that his are made of special, 100 % transparent, non-reality-deforming material. Moreover, he suggests that ‘conscience’ is simply a certain empirical fact or state of affairs: “Meine Vermutung ist, daß der Begriff ‘Gewissen’ benutzt wird als Schutzmarke für ein solches System der Steuerung hochgradig selektiver Erlebnisverarbeitung. Was sonst sollte er als empirischen Tatbestand bezeichnen.” To see conscience (the term ‘conscience’) as a sort of cloaking device does not do justice to people’s experiences of conscience, nor to their self-understanding. Social theorists need not accept and adopt that self-understanding of course – or why would we need them? – but a ‘scientific’ concept cannot simply claim to replace people’s self-understanding and claim the status of the ‘true’ concept for itself. Most of the time, Luhmann displays his awareness that this is indeed too much to claim for his concept.

There is a problem with Luhmann’s concept of conscience that is shared by many modern concepts of conscience: it sees conscience one-

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<sup>89</sup> Luhmann (1970), 12; Luhmann 1965, 278-279. Luhmann (1973), he presents his own view not as a replacement of ‘traditional’ views, but as a view of the matter under another aspect, and with a different aim and function. Theological and moral philosophical theories, for instance, “articulate the reality of conscience with a view to its perfection”, whereas Luhmann articulates it “with a view to its function”.

<sup>90</sup> Luhmann (1970), 16. [“serves as a euphemistic, honorific, advertizing designation for control devices that undertake indispensable functions in a particular state of societal development”]

sidedly from the perspective of the preservation of integrity, and forgets the intentionality of conscience – the fact that conscience is *about* something. Without denying the link between conscience and (the preservation of) integrity, one may note that the preservation of integrity is usually not a person's *motivation* when acting morally and conscientiously. I may be conscious of my own striving to preserve my integrity, and perhaps it is always part of moral motivation; but to act according to conscience is primarily a matter of trying *to do the right thing*, without considering the consequences for one's integrity. (This is one reason why there may be inconsistency between one's conscientious actions.) By saying that conscience 'is about something' I do not counter Luhmann's claim regarding the integrity-preserving function of conscience, but I approach the matter from another angle – one that is more sympathetic to people's self-understanding.<sup>91</sup>

Conscience can become the object of consciousness in its intentional mode.<sup>92</sup> But conscience itself can be understood as a mode of consciousness (as I will explain more fully in the next chapter), and therefore it also knows the structures or modes of intentionality and luminosity. In the first mode, conscience can be said to be about something; in the second, something becomes luminous in conscience. (There is no sense in distinguishing further between 'experiencing' conscience in consciousness in its structure of luminosity and conscience itself having that structure.) That conscience can have the structure of luminosity also (or this, particularly) goes unrecognized by Luhmann and other contemporary authors. Conscience, being a mode of consciousness, is a point of contact with a reality outside the subject; in other words: reality extends into consciousness. This does not entail a naive objectivism – it is naive to suppose that there exists a subject in isolation from the 'object' reality. Pre-objective reality may be more or less transformed in becoming an object for a subject; the truth

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<sup>91</sup> Hence I disagree with Childress (1979), 327, where he says: "In appealing to conscience I indicate that I am trying to preserve a sense of myself, my wholeness and integrity, my good conscience, and that I cannot preserve these qualities if I submit to certain requirements of the state or society." This may capture an aspect of some, perhaps many, conscientious objections; but what the objector primarily 'indicates' is that a given action would be incompatible with his conception of what it means to be good. His conscience *and* his conscientious objections express ultimate concern; the aim at this ultimate concern produces the integrity of the objector. Hence, we can say that the objector tries to protect his integrity – but this is derivative, not primary. About integrity see especially chapter 15.

<sup>92</sup> In the strictly Voegelinian sense of 'intentionality', this is a deformation, for conscience does not belong to thing-reality; Voegelin would speak of 'reflective distance' where conscience is the object of reflection without deformative consequences. I will return to this in chapter 8.

relation may be stronger or weaker, and they come in various kinds, as we saw, for example, in Wordsworth's case.

If we were to take the Luhmannian description of conscience to be all there was to conscience, we would have to ignore all such considerations of its 'contents', of what was 'revealed' in conscience. Conscience would be part of a more or less self-enclosed system – self-enclosed in the sense that its business would be with the self alone. Such a view is most strikingly expressed by Hannah Arendt, according to whom conscience “is not primarily interested in the world where the wrong is committed or in the consequences that the wrong will have for the future course of the world”; instead, “it trembles for the individual self and its integrity”.<sup>93</sup> Hannah Arendt points to Socrates to corroborate this view, apparently forgetting that the *Apology* has Socrates say that ‘doing nothing unjust or impious’ is his ‘whole concern’. Just as consciousness is intentional, so is conscience. It might be correct to say (as Luhmann does) that conscience *functions* as a guardian of one's integrity, that the *function* of conscience in the personal system we call ‘self’ is to preserve that self in the face of threats to its stability – but that is something altogether different from saying that the conscience is (based in) *a concern* for the self, or that conscience is ‘not primarily interested in the world’. The experience of conscience as (I think) we all know it, is of something that is fundamentally interested in the world. Conscience ‘tells’ us to refrain from certain actions *because of the harm they will produce, or because they are bad*.<sup>94</sup> Luhmann need not have made Arendt's mistake, though his view of conscience is certainly one-sided. But in fact he does make the mistake of seeing his own concept as on the same level as (and therefore a competitor of) one that allows for the luminosity and intentionality of conscience:

“Das Gewissen besorgt (...) nicht die Erkenntnis und Verkündung unverbrüchlicher Prinzipien, nach denen man handeln soll. Es leistet

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<sup>93</sup> Hannah Arendt, “Thinking and Moral Considerations”, *Social Research*, Vol. 38, 1971, 442, quoted in Larry May (1983), 60. Jenkins (1955), 265, too, says about conscience that “its concern is for the character of the self”. A concept of conscience like that put forward by Arendt would have been horror to many (especially British) Enlightenment philosophers, as well as to John Dewey. Cf. Wollheim (1986), 224: “[W]hatever may be the content of obligation, obligation itself is primarily self-directed. It is self-directed, though it may be other-regarding. For it expresses itself in a thought that a person has about what *he* ought to do (...).” This seems to me incorrect for morality as a whole (or obligation in general), but might hold in the case of conscience. That the ‘command’ is directed towards oneself does not mean that conscience is *concerned* with the self. Thus, Wollheim may have drawn attention to the source of Arendt's (and other people's) confusion.

<sup>94</sup> Earle (1970), 307, also omits this aspect when he writes that “[a] violation of one's own conscience (...) is (...) like the threat of dissolution of one's own deepest self.”

vielmehr die *Einheit der Zurechnung von Prinzip und abweichendem Verhalten*, und nur diese Einheit ist unverzichtbar und notwendig.”<sup>95</sup>

Another difficulty with Luhmann’s approach is that it presupposes a view of morality that few people, other than certain social theorists, would be willing to accept (and it is another question to what extent those who accept this view really ‘work with it’ in their everyday lives). In connection with this, Luhmann’s view allows for all kinds of matters to be called matters of conscience, that no one would ever refer to as such. It may be a matter of conscience to someone to be allowed to pursue his career under all circumstances, when this is constitutive of his identity and of his sense of meaning in life. For example, a very promising singer may ‘conscientiously’ object to military service, because this would fatally obstruct his development as a singer.<sup>96</sup> This is simply not how we use the term ‘conscientious’. Perhaps Luhmann himself was not completely convinced either. In theory, he widens the concepts of morality and conscience to encompass also what we would normally designate as non-moral matters. But in his examples, he tends to remain within the field of ‘ordinary’ morality. As examples of possible ‘gegenstrukturellen Verhaltens’ he mentions lying, hurting and killing.<sup>97</sup> Examples of behaviour that has ‘nur periphere Bedeutung’ are drawn from the non-moral domain: accidentally nudging someone, or miscalculating. More significant behaviour would be: a scientist committing plagiarism, an officer showing fear, and adultery. We would consider the first and the last to be moral matters, and Luhmann himself states: “Handelt es sich (...) um sozial standardisierte Probleme und Verhaltenserwartungen, nennt man diese zentralen Kriterien *Ehre*. Geht die kritische Bedeutung dagegen auf die Struktur der individuellen Persönlichkeit zurück, so treffen wir auf das Phänomen des *Gewissens*.”<sup>98</sup> Again, with respect to the meaning of ‘morality’, Luhmann’s relation to people’s self-understanding is problematic.

Finally, I would like to note that Luhmann (over)dramatizes conscience, or at least that his focus is extremely narrow, lying only on the dramatic manifestations of conscience. It is a bit of a stretch to speak of the small crimes we all commit against our consciences in terms of the question: “Can I do this and still be me?”; that is, conscience manifests itself far more often than we pose that question. The narrowness of Luhmann’s perspective is undoubtedly related to his aim in the articles in which he develops his concept of conscience, namely to construct a concept of conscience that can

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<sup>95</sup> Luhmann (1973), 238.

<sup>96</sup> The example was provided by A.W. Musschenga.

<sup>97</sup> Luhmann (1973), 229.

<sup>98</sup> Luhmann (1965), 265. Luhmann’s Darwinian view of morality also entails that the authority of conscience cannot be a matter of right, but only one of power.

be used in juridical contexts, in particular that of conscientious objection – but that does not remove the problem.

#### 7.4. CONCLUDING REMARKS

There are many more philosophical concepts of conscience than the few I have discussed above. In my view, they all suffer from one flaw or another (or from a number of flaws, of course), but I cannot argue for that here. At any rate, up to now no one has attempted to design a concept of conscience that deals with the problem of the synchronic and diachronic diversity of the ‘dictates’ of conscience, while at the same time doing justice to people’s experience of conscience, and to their self-understanding. Anyone who desires more than a ‘local’, parochial understanding of conscience will have to regard existing concepts of conscience as flawed for this reason alone.

I have also not discussed non-philosophical concepts of conscience, of which psychological concepts would have been the most prominent candidates for inclusion in this chapter. The reasons for this have been discussed in the introduction to this book. In Luhmann’s concept of conscience, as well as in most other recent concepts of conscience, the influence of various psychological approaches is evident. It is not surprising, then, that they suffer from the same or similar problems. Theological concepts of conscience may not suffer from these problems, but I will not discuss them, because they tend to fit conscience into a particular theological perspective, which in turn tends to be coloured by a specific religious view. I do not wish to end up with some specific form of the Protestant or Catholic conscience; on the contrary, my purpose in the next chapter will be to devise a concept of conscience that accommodates *all* experiences of conscience, religious (in the traditional sense) or not; Catholic or Protestant, Christian or non-Christian. It is crucial that it deals with the synchronic and diachronic diversity of ‘dictates’ of conscience, while also doing justice to people’s diverse self-understandings, as well as to the phenomenology of conscience, that both gives rise to people’s self-understanding and results from it.





## 8. A fluid concept of conscience

“To philosophize means to reverse the normal direction of the workings of thought.”

“In so doing [the mind] will arrive at *fluid concepts*, capable of following reality in all its windings and of adopting the very movement of the inner life of things.”

HENRI BERGSON, *Introduction to Metaphysics*, Philosophical Library, New York, 1961, 64; 63-64.

### 8.1. THE SYMBOL AND CONCEPT OF CONSCIENCE

‘Conscience’ is primarily a symbol, expressing experiences that belong to a certain class; we are able to recognize experiences of this class, and can therefore call them experiences of conscience. That we are able to recognize experiences of conscience entails the possibility of coming to see and speak of conscience as an intentional object; the possibility of thinking and speaking about it *indicatively*, rather than symbolically. Thus we form *concepts* of conscience, but these are deformations of reality in the sense that they freeze a fluid reality and cut it in to pieces, analyzing the frozen reality into (what are supposedly) its basic elements; they are deformations in a stronger sense, insofar as they suppose conscience to be something of the order of *existents* – and this is what indicative language generally tends towards. Voegelin distinguished between two structures of consciousness: luminosity and intentionality. Symbols are the natural extension of consciousness in its first structure; concepts belong to the latter. But we can think about these structures of consciousness, and about the whole of the reality in which we participate, and this led Voegelin to posit a third structure of consciousness, which he called *reflective distance*.<sup>1</sup> “All philosophy is conducted in reflective distance within consciousness about consciousness.”<sup>2</sup> Not all philosophy deforms reality – or not to the same extent, anyway, and Voegelin’s term ‘reflective distance’ highlights the difference between reflecting on something in a legitimate way and mistaking what Voegelin calls ‘It-reality’, the reality that can only be expressed symbolically, for ‘thing-reality’, which we speak of in an indicative manner; for it is only through reflective distance that we can distinguish between the two. When reflective distance collapses, neither symbols nor concepts can be seen for what they are.<sup>3</sup>

I do not agree with Voegelin that *all* philosophy distances itself enough from the everyday indicative mode of thought. (I mention the

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<sup>1</sup> See especially Voegelin (1984), 50-51, and Voegelin (2000), 54-56, and 58-59.

<sup>2</sup> Voegelin (2004c), 399.

<sup>3</sup> See Buijs (1998), 207-208.

indicative mode of thought, because this is what thought is most likely to lapse into when reflective distance collapses.<sup>4</sup>) Whether it does distance itself enough from it depends on whether it recognizes the status of its own language. Many philosophical concepts of conscience betray an indicative view of conscience – if this does not entail reification, then at least the attempt to pin down a fluid reality; to define the exact place of the concept of conscience in relation to its neighbouring concepts. All these concepts absolutize one or a few aspects of conscience at the cost of all others. So reflective distance is continually in danger of losing distance, of becoming indistinguishable from the structure of consciousness Voegelin calls intentionality, for which conscience then becomes the object, the ‘thing’ apprehended.

There is an illegitimate and a legitimate way of thinking and speaking indicatively about conscience, then. The legitimate form of indicative thought arrives at concepts, just as the illegitimate form, but it differs from the latter in that the concepts it arrives at are *fluid concepts*.<sup>5</sup> A concept is ‘fluid’ when it meets two criteria: 1) it includes within itself an awareness of its own secondary nature, and of its own limitations, that shows in the fact that it does not reduce the conceptualized reality to one of its aspects, let alone reify it;<sup>6</sup> 2) it is designed so as to be able to adjust to a flowing reality. A disadvantage of concepts is that they tend to absolutize certain aspects of a phenomenon. The practice of analysis forces the philosopher out of the symbolic mode of thought, into the indicative mode. The problem is to maintain an awareness of the limitations of this mode, and of the symbolism which forms its background.<sup>7</sup> My concept of conscience, which I take to be a fluid concept, is intended to do just that.<sup>8</sup> Bergson said that there are two

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<sup>4</sup> Ibid., 208: “Waar men deze herinnerende distantie buiten werking zet, wordt het mogelijk met symbolen te gaan opereren alsof het begrippen zijn.” [“Where this remembering distance is put out of play, it becomes possible to operate with symbols as if they are concepts.”]

<sup>5</sup> Langston (2001), 123, expresses this possibility in his own terms; common concepts of conscience present it as some sort of entity, but we need not discard them: “As it turns out, we might be able to retain our ordinary notion of conscience while understanding that it is not in fact such an entity. The case of the electron presents a possible model for doing this.” Cf. 177: “Understood in the proper way, conscience can be seen as a useful analytical notion.”

<sup>6</sup> In other words: the fallacy of misplaced concreteness is avoided.

<sup>7</sup> If this is successfully done, one may speak of ‘reflective distance’.

<sup>8</sup> It is not a *description* of conscience that freezes and dissects a fluid reality; yet it is unavoidably a *circumscription*, which isolates a ‘part’ of a flowing reality, observing it from many sides, under different aspects. As description involves *decision*, so circumscription, we might say, involves *circumcision*; it goes around the ‘object’, making small cuts all around in order to arrive at a *panoramic* description – but still cutting, so as to get rid of certain elements for reasons of hygiene, religion, or otherwise.

ways of knowing. One consists of “going all around it, the second entering into it”.<sup>9</sup> For Bergson, to grasp reality intuitively, sympathetically, was to form fluid concepts of it. While I share his criticism of analysis and of ordinary concepts (for which he tended to use the word ‘symbols’), I do not fully share his optimism with regard to our ability to grasp reality intuitively. Or, to say the least, as soon as we articulate what (perhaps) we have grasped intuitively, we lose something, we deform reality. But I do believe that it is possible to arrive at fluid concepts, that, while they share some of the characteristics of ordinary concepts, are also informed by what Bergson would call an intuitive grasp of reality. A fluid concept is still inevitably too clean; it is unavoidably restrictive. But that is acceptable as long as its limitations are recognized. Human consciousness reduces complexity; the challenge which a fluid concept is intended to meet is to do so *while retaining* complexity.

Why would I want to design a fluid concept of conscience, when I have already analyzed the symbol of conscience, and claimed that the symbolic mode of thought and speech is primary?<sup>10</sup> That I have *analyzed* the symbol of conscience immediately points to the fact that as a philosopher I cannot remain in the symbolic mode myself, but am inevitably forced into the indicative, conceptual mode of thought. This is not a matter of choice. But why not be satisfied with the analysis of the symbol? The reasons for this are of a practical nature. Firstly, people who are so used to thinking of conscience indicatively that they cannot see the symbolic aspect that still resides in it may not be able to relate very easily to what I have said about the symbol of conscience. To use a fluid concept of conscience facilitates communication. In fact, it does so for everyone, for it is inevitable that in the remainder of this book I will speak, as I have done in the preceding chapters, about ‘his conscience’, ‘her conscience’, and so on – it is inevitable, that is, that I will speak about conscience indicatively, and it will be useful to have a fluid concept to which the term ‘conscience’ may then refer. Every time I use the term in this manner, it will be clear what I mean. Whereas uptil now, when I did not speak of the symbol of conscience, but of conscience as such, I had to rely on the reader’s pre-understanding of the term, from this chapter on I need no longer do so (or to a much lesser degree). The fluid concept of conscience is also meant to expel a certain vagueness that pertains to symbolic expressions of conscience, and to create a more unified image of

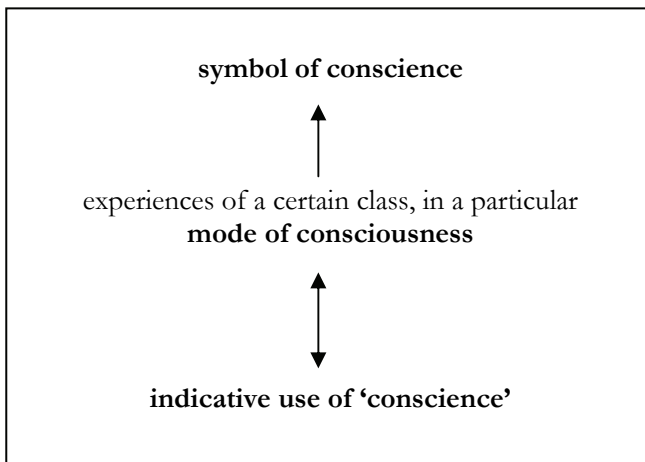
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<sup>9</sup> Bergson (1961), 1.

<sup>10</sup> I know people who maintain that we are better off *without* the concept of conscience, and argue against using it. A philosopher may indeed choose not to make use of the concept, but he has no power to stop others from using it. Both the symbolic expression of conscience and the indicative use of the term have a long tradition. In view of the importance that has been and still is attached to conscience, the most sensible thing to do seems to be to try to make sense of the way the term is used, and to strive for a legitimate indicative use of the term.

conscience than can be done by means of an analysis of the symbol of conscience in terms of its core elements.<sup>11</sup> Naturally, the clarity gained comes at a price, but I have said enough about that above. Finally, it is worth noting that there is nothing unusual about having a concept for ‘things’ for which we also have symbols. ‘God’ can be said to be a symbol, but there are many concepts of God. The same holds true for ‘things’ as diverse as Freedom, Equality, Justice, Truth, one’s country, one’s favourite football club, and so on. I am an Ajax fan myself, but I use the term ‘Ajax’ both indicatively and symbolically (and often something in-between). I do not think anyone would find that problematic.

What is the relation between the symbol and the fluid concept of conscience? This is best illustrated by means of the following figure:



Experiences of conscience gave rise, primarily, to the symbol of conscience (and the symbol ‘conscience’), but also, indirectly, to an indicative use of the term. The latter, of course, could also have occurred if ‘conscience’ had not become the prime carrier of the symbol of conscience (which I only named the symbol of *conscience* because it did) – indeed, we have seen that ‘syneidos’ and ‘syneidesis’ were already used in a partially indicative manner, and that the term ‘moral sense’ was used to refer to a special sense or faculty that supposedly enabled people to distinguish right from wrong. The indicative use of the term ‘conscience’ and its predecessors gradually developed as the

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<sup>11</sup> That does not mean that I agree with Peter Fuss, who simply sweeps aside everyday expressions of and thought about conscience, stating that “[t]he moral philosopher (...) is concerned with the precise nature of conscience” and therefore “fails to make the necessary distinctions at his peril”. (Fuss [1964], 117.) Instead of passing by everyday thought, the philosopher should try to make sense of it, as he should try to make sense of his or her own experiences.

relation between the experiences that originally engendered the symbol weakened. Paradoxically, this may have been the result of such experiences becoming more common, so that 'conscience' came to occur more regularly in ordinary language, as well as in philosophical reflection. As 'all repetition is anti-spiritual' (Oscar Wilde), the symbol of conscience gradually made way for an indicative use of the term, and for concepts of conscience that in turn influenced people's experiences of conscience and the way they expressed these and interpreted them.

The arrow between the middle section (the experiences of conscience) and the symbol of conscience means that the symbol was *engendered by* those experiences. The double arrow between the experiences and the indicative use of 'conscience' suggests, on the one hand, that the experiences gave rise to indicative use of the term as well (albeit indirectly), and on the other, that it is the *mode of consciousness* in which people have experiences of conscience that the indicative use of the term 'conscience' must be understood to refer to. The latter must not be misunderstood: when people speak of 'conscience' in an indicative manner, they do not intend to refer to a mode of consciousness; this is not what they have in mind. If anything, they may have an old-fashioned faculty in mind. But if there is anything to which the term conscience might refer, it is a mode of consciousness. To think of conscience in this way is the best way to make sense of indicative use of the term, and of the variety of concepts of conscience. Indeed, to call that mode of consciousness in which we have experiences of conscience by that same name; that is, to say that conscience is a mode of consciousness, enables me to give a coherent interpretation of both symbolic and indicative uses of the term, of symbolic expressions of conscience and of previous conceptualizations of conscience. At the same time, I am able to take people's experiences and interpretations of conscience seriously; when I interpret experiences of conscience as experiences that people have in a certain mode of consciousness, I do not reduce them to anything. Everything remains open.

The fluid concept of conscience is not on a par with the indicative use of the term 'conscience' in the figure above. It is the sediment of that structure of consciousness Voegelin called 'reflective distance'. I have attempted to acquire an overview of the whole complex, including both indication, symbolism, and its source. The fluid concept of conscience locates it at this source. Conscience is that mode of consciousness in which people have experiences which they express in the symbol of conscience, and which people attempt to capture with their indicative use of the term, including their concepts of conscience. But in saying this I have not said anything substantial about conscience. The fluid concept needs a more concrete formulation; hence, I will define conscience as *a concerned awareness of the moral quality of our own contribution to the process of reality, including our own being*. What this means is the subject of the following sections.

I will start out by explaining the idea of conscience as a mode of consciousness and a concerned awareness. Rather than impose a rigid order on the elaboration of the fluid concept of conscience – as could be done, perhaps, by working through a list of traditional questions (is conscience a source of knowledge, yes or no? if yes, what kind of knowledge does it convey?; is it fallible? if it is not a source of knowledge, is it a source or container of something else, is it a drive towards the good, or something other than that? et cetera) – I will let the discussion of diverse aspects of the concept flow from the previous one. The section on conscience as a mode of consciousness starts out with a discussion of the relation between conscience and consciousness; this will give rise to an examination of the idea that conscience is a form of intuition, and the related problem of the subjectivity or objectivity of conscience – and so on. Sometimes I will start anew, from another angle. To proceed otherwise – if it would not turn out to be impossible, because discussions of different aspects of the concept will inevitably overlap – would only suggest an exactness that is a fake. It would suggest that conscience allows itself to be exactly defined and neatly compartmentalized, whereas in fact we are dealing with a fluid reality that we can only attempt to follow ‘in all its windings’.

8.2, then, treats of conscience as a mode of consciousness. 8.3 discusses the idea that the final aim of the development of conscience is a twofold openness. In 8.4, I elucidate the notion of ultimate concern. 8.5 discusses the notions of luminosity and intentionality in relation to conscience. In 8.6 I turn to the question what it means that conscience is a concerned awareness of ‘the moral quality of our own contribution to the process of reality’. Finally, in 8.7, I discuss the relations between (the definition of) conscience and experience.

## 8.2. CONSCIENCE AS A MODE OF CONSCIOUSNESS

### 8.2.1. Conscience and consciousness

Why would I speak of conscience as a mode of consciousness? Because in conscience we are aware of things in a qualitatively different way from our ‘ordinary’ consciousness. But is there such a thing as ‘ordinary’ consciousness or awareness of things? Are we not always in one or another mode of consciousness? Although it is not critical to my argument whether conscience is one of few or one of many modes of consciousness, I would argue that it is one of few modes of consciousness that ‘claim us’ as fully and strongly as conscience does. We enter into conscience with the whole person. In short, the phenomenology of conscience suggests the idea that it is best thought of (conceptually) as a mode of consciousness. The fact that we are often ‘thrown’ into conscience by certain events or situations (see 8.2.2) lends strong support to this view.

I am by no means the first to suggest that conscience is to be understood as a mode of consciousness.<sup>12</sup> James Childress wrote: “Conscience is a mode of consciousness and thought about one’s own acts and their value or disvalue.”<sup>13</sup> Köhler also suggested that conscience is a kind of consciousness.<sup>14</sup> And Karl Hörmann wrote: “G[ewissen] ist eine besondere Art des Bewußtseins: Der Mensch kommt zu einem Wissen, von dem er in eigenartiger Weise betroffen wird; ein Sollen wird ihm bewußt, das ihn nicht gleichgültig läßt.”<sup>15</sup> Hörmann’s description is a valuable starting-point. He elucidates: “Im G[ewissens]vorgang geht es nicht bloß um ein intellektuelles Erkennen einer allg[emeinen] sittl[ichen] Wahrheit od[er] einer daraus gezogenen Folgerung auf das Konkrete hin, sondern darum, daß der Mensch von einer sittl[ichen] Forderung konkret getroffen wird.” Conscience differs from ‘normal’ consciousness in that it is necessarily deeply concerned. “Sittl[iches] Wissen ist noch nicht G[ewissen]. Wissen kann kühl und distanziert aufgenommen werden; zum G[ewissen] gehört das Betroffensein. Es geht nicht nur um logische, sondern um existentielle Einsicht. G[ewissen] hat den Charakter des Erlebens, u[nd] zwar des Werterlebens.”<sup>16</sup>

Hörmann makes some important observations here. Whereas one may be conscious of something and remain unmoved by it, one cannot be indifferently *conscient* of anything. Conscience necessarily implies interest, concern. In many cases, ‘normal’ consciousness is not disinterested either, however, so conscience does *not* differ from ‘normal’ consciousness in that the former necessarily implies concern, whereas the latter is always unconcerned. But an important difference is that ‘normal’ consciousness *may* be disinterested. Another difference lies in the *kind* of concern that characterizes conscience, in comparison to the kinds of concern that may characterize ‘normal’ consciousness. This difference does not arise merely from the fact that conscience is concerned with moral matters (in a broad sense); moral knowledge need not be conscientious knowledge.<sup>17</sup> One can be conscious of the (im)morality of some action, even one’s own action, without being conscientiously concerned – without being conscient of it. Nevertheless, there is a relation between the object of conscience and the type of concern that characterizes it. Feelings of guilt, that are the most common affective component of experiences of conscience, cannot be seen

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<sup>12</sup> The earliest example I found is Dole (1906), 419, where conscience is said to be one of several modes of consciousness.

<sup>13</sup> Childress (1979), 317.

<sup>14</sup> Köhler (1941).

<sup>15</sup> Hörmann (1976), section 1. Many terms were abbreviated in the lexicon; hence all the brackets.

<sup>16</sup> *Ibid.*, section 3.

<sup>17</sup> I will elaborate on the meaning of ‘moral’ in a later section.



in isolation from that about which one feels guilty. It is not just a feeling; it is a feeling *of* something, and *about* something. When I say that conscience is a concerned awareness of the moral quality of our own contribution to the process of reality, including one's own being, I understand the concerned awareness to be coloured by that of which it is an awareness. The fact that it is *you* who thinks or acts, that it is what *you* feel is the moral quality of *your own* contribution to the process of reality, and to *your own being*, which means that your character and moral identity are at stake – this fact does account in part for the peculiar nature of the affective components in experiences of conscience. Moral disapproval of another's actions is never of the same kind (though sometimes of the same intensity) as moral disapproval of one's own actions.

I have accepted the Whiteheadian view of consciousness as a mode of attention; conscience, then, is also a mode of attention. It is a way in which we attend to certain matters. Whitehead also explained consciousness as a possible subjective form of prehensions – the subjective form being *how* something is experienced. Joy or sorrow are subjective forms, but so is consciousness. To experience something *consciously* is different from experiencing (“prehending”) something unconsciously.<sup>18</sup> So conscience can also be regarded as a subjective form. Experiences of conscience often have guilt as an element in their subjective form, which enables us to recognize the experience as an experience of conscience, but guilt does not exhaust the subjective form of such experiences. Nor need it always be present as part of the subjective form. An inspirational experience of conscience, for instance, is not typically characterized by feelings of guilt or remorse.<sup>19</sup> Whitehead says

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<sup>18</sup> There are also different kinds or degrees of consciousness; that I am conscious of something need not entail that I form the proposition: “There is a ... over there.” Consciousness, of whatever degree, implies merely ‘an emphasis upon a selection of objects’.

<sup>19</sup> Shame may also be an important element in the subjective form of experiences of conscience. From cultural anthropology we have inherited the far too simple distinction between guilt cultures and shame cultures; guilt would then supposedly be the result of internalization of moral rules and principles, while shame would occur where rules and principles are not so much internalized, but rather experienced as external constraints. Another (more philosophical) way of putting the difference is to say that shame and guilt have different objects. One is ashamed when one has broken the rules of etiquette, but feels guilty when one has transgressed moral rules. This idea also does not hold. Guilt and shame can both be the result of internalization, and they can have the same object. What *is* different is the imagined ‘audience’ in front of which one has transgressed; in the case of guilt, this may be God or oneself, whereas in the case of shame it is usually other people, though it may also be oneself. Cf. Wollheim (1986), 230. There are many other differences between guilt and shame. The best article available is Lamb (1983). Lamb demonstrates, for instance, that shame has many more possible objects than guilt. See chapter 13 for examples of inspirational experiences of conscience.

that “there are many species of subjective forms, such as emotions, valuations, purposes, aversions, aversions, consciousness, etc.”<sup>20</sup> He does not say much about the differences between the two. I would say that consciousness and conscience are more complex types of subjective form than, say, anger or joy. Also, the feeling of guilt and conscience are not on a par. It makes sense to say that guilt is an element in the subjective form that is conscience – not the other way around. In other words: conscience is a subjective form with a higher level of integration.

So conscience entails that I am aware of the moral quality of my own contribution to the process of reality, including my own being, in a particular way. It entails a *concerned* awareness – but as Whitehead explains, it is a general truth that ‘the subject has a concern for the object’; in Heideggerian terms: that ‘Dasein’ is characterized by ‘Sorge’. This is only a necessary precondition for conscience; but conscience entails more than this type of concern. The concerned awareness that is conscience relates to, and is shaped by, an *ultimate concern*. It is in light of one’s ultimate concern, and because one is ultimately concerned (or concerned for an ultimate), that one prehends one’s own contribution to the process of reality. What one judges to be, or experiences as, the moral quality of that contribution depends on the concrete form one has given or gives to one’s ultimate concern.

I have spoken of conscience as a *mode* of consciousness, but also as a concerned awareness. So what is it? A mode of consciousness, which is a *way* of being aware of something, or simply a concrete awareness? The term can be applied to both. It is a mode of consciousness, *how* something is experienced, a way of being aware of something. This way entails: an attitude of concern, and relating what one is aware of to a moral-religious standard – not necessarily a concrete, articulated standard, but possibly only a dimly perceived value-ideal. In this mode of consciousness the moral quality of one’s own contribution to the process of reality (including one’s own being) lights up. But one finds oneself in this mode of consciousness only temporarily; to be in it all of the time is a recipe for madness. In other words: we are dealing with *transitive* consciousness: our concrete, momentary awareness of something. For this reason, one can also speak of conscience simply as a concerned awareness of a specific kind – as the concrete awareness, rather than the way in which one is aware. The mode of consciousness is co-constitutive of the *contents* of consciousness. These things are inseparable, which is not surprising, given that consciousness is a mode of attention, which means that every mode of consciousness is a different mode of attention, which in turn results in different (even if only differently experienced) contents of consciousness.

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<sup>20</sup> Whitehead (1985), 24.

### 8.2.2. Intuition, feelings, and objectivity

Usually, people do not enter the mode of consciousness I call conscience by choice. Rather, we are thrown into this mode by confrontation with something that triggers this reaction. There must be some susceptibility to moral or moral-religious value for this to happen; Kant recognized this, as did Heidegger. The voluntaristic scholastic view of 'synderesis' conveys a similar awareness. Someone who really 'doesn't care' cannot be thrown or forced into that mode of consciousness that is conscience. But as soon as someone's cares, as soon as there is some sensitivity to value, the possibility of conscience arises. Insofar as it is (part of) someone's ultimate concern to live a morally good life, to be a good person, he or she will have a number of more concrete concerns in which this ultimate concern finds expression. Supporting aid organisations, perhaps, voting for (or participating in) a certain political party, trying not to waste water and electricity, et cetera. This means, on the one hand, that conscience often does not enter into activities relating to these concerns, because they have become part of one's routine; on the other hand, when something pertaining to one of these concerns occurs – something apart from one's habitual activities – conscience will 'stir' quite easily. Let us say, for example, that I care about the environment – or that I see myself as someone who does, because I think one ought to care about the environment – and that for this reason I try to minimize my energy consumption, only travel by public transport, and so on. Imagine, also, that I am rather sloppy when it comes to separating my green waste from my dry waste, and lazily and habitually dump it all together. (*Imagine*, I say.) Now, if someone were to point out to me that this is not very consistent with my concern for the environment, this remark may be the trigger for a concerned awareness of the moral quality of my 'waste disposal conduct'; it may throw me into this mode of consciousness.

Because we are often *thrown* into conscience, it has been described as an intuition of moral-religious value. It often has the character of an immediate perception (or, preferably, prehension) of moral quality. Elmar Holenstein neatly summarizes: "Unter einer Intuition versteht man ein unmittelbares Erfassen von etwas, vor allem von Beziehungen, von Zusammenhängen. Ist der Gegenstand einer Intuition ein Wert, spricht man gemeinhin von 'Gewissen'."<sup>21</sup> What conscience 'intuits' tends to present itself as self-evident. But is it really an intuition of something that needs no further 'proof'? Holenstein rightly regards such a suggestion as problematic. The seeming self-evidence of intuitions is no guarantee that they are not illusory. He comes to this conclusion: "*Intuition, in bezug auf Werte als 'Gewissen' bezeichnet, hat keine juristische, sondern eine heuristische Funktion.*"<sup>22</sup> Intuition may save people a lot of trouble and deliberation, but, Holenstein argues, the

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<sup>21</sup> Holenstein (1985), 77.

<sup>22</sup> Idem; cf. 82.

final judgement can only come from reason ('Vernunft').<sup>23</sup> As I said, it is because we are often *thrown* into conscience that it is thought of as a form of intuition. But it is *only* for that reason that conscience has been regarded as conveying intuitive (infallible) knowledge – and this reason cannot support the inference drawn from it. Conscience is a mode of consciousness, not a source of knowledge; in conscience we apprehend things in light of our ultimate concern (in its aspect of the Good). It does not so much tell us anything we did not know, but makes us see things in light of what we already 'know', and it relates things to our ultimate concern that we did not consider in that light before we entered this mode of consciousness.

Just now I wrote 'makes us see', but virtually inevitable though such phrases are, they are also deceptive. Conscience does not *make* us see anything; it *is* our seeing things in a certain light. We must resist any urge to turn conscience into an independent agent. We speak of 'my conscience', 'your conscience', 'her conscience' and so on, as easily as about 'my bike' and 'your bike'. We say that we 'have' a conscience, which does all kinds of things. All this suggests the stable presence of a thing with certain characteristics, or an independent agent with certain abilities. But conscience is not a stable presence; it is only because our ultimate concerns are relatively stable over time – though not in case of a conversion – and because for that reason 'our conscience stirs' at comparable occasions and for roughly the same reasons, that we come to think of it as a stable presence.<sup>24</sup> It is the idea of conscience as an independent agent that makes people attribute all kinds of characteristics to conscience, and makes them ask, for instance, whether conscience is infallible or not. The question is absurd; no-one would ask whether *consciousness* is infallible or not, and conscience is best understood (conceptually) as a mode of consciousness.

Does that mean that we cannot *come to know* anything new in conscience? I believe it does not, although it depends, of course, on what one would be willing to count as new. In a sense, we 'know' something we did not know before when we relate something to our ultimate concern that

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<sup>23</sup> Ibid., 82. Holenstein wonders why people often appeal to their conscience, only to subsequently back up their views by empirical claims and reasons that others can also understand. He says that two meanings of 'conscience' are often confused; the first is that of conscience as 'moral consciousness'. Conscience is distinguished from other faculties by its contents. The second meaning of 'conscience' is more psychological; conscience is then a mode or level of consciousness concerned with (interiorized) ethical values, which is characterized by the fact that its approval or disapproval of actions is grounded in nothing but its own certainty, as opposed to a judgement that can be argued for and debated. I disagree with Holenstein. Conscience must indeed be understood as a mode of consciousness, but that does not preclude the possibility that moral judgement is a part of it; it is not, as Holenstein says, an 'außerrationale Instanz'.

<sup>24</sup> Cf. Fuss (1964), 116-117; Childress (1979), 322.

we previously did not see in that light. But our ultimate concern and its more concrete expression in a (usually incompletely or even very minimally articulated) moral-religious standard have not changed. But conscience, like consciousness, belongs to what Whitehead called the supplemental and the mental phase of prehensions. The latter phase offers the possibility of the prehension of possibilities, including ideals. Therefore, it is an important source of creativity. The mental phase allows the influx of novelty. In conscience, then, we may become aware of an unrealized possibility or value (or of such a realization being balked in the situation at hand).<sup>25</sup> In this respect, it is interesting to consider what Jonathan Bennett has written about the conscience of Huckleberry Finn.<sup>26</sup>

#### 8.2.2.1. *The conscience of Huckleberry Finn*

Bennett draws attention to the possibility of a conflict between (*bad*) *morality* and *sympathy*.<sup>27</sup> He discusses not only Huckleberry Finn's conscience (from Mark Twain's novel *The Adventures of Huckleberry Finn*), but also the conscience of Calvinist minister, philosopher and theologian Jonathan Edwards (1703-1758), as well as that of Heinrich Himmler, leader of the SS in the German Nazi regime. In the novel, Huck Finn helps his slave friend Jim to escape from his owner, Miss Watson. Rafting down the Mississippi, they come close to the point where Jim will be legally free. Then, Huck's conscience begins to stir, because Huck is to blame for helping a slave, who was another person's property escape:

“Conscience says to me: ‘What had poor Miss Watson done to you, that you could see her nigger go off right under your eyes and never say one single word? What did that poor old woman do to you, that you could treat her so mean?...’ I got to feeling so mean and so miserable I most wished I was dead.”<sup>28</sup>

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<sup>25</sup> Conscience, then, is not a source of knowledge. But we can come to know things through conscience. Conscience may lead to knowledge in a similar way as looking at something may. Iris Murdoch (1974) rightly emphasizes the importance of looking and (loving) attention in ethics. In conscience we attend to things in a particular way, and this may disclose the world in a new way and in new aspects. See especially Murdoch (1974a), 31 and 34; Murdoch (1974b), 68ff.; Murdoch (1974c), 90-93, 100-101.

<sup>26</sup> Jonathan Bennett, “The Conscience of Huckleberry Finn”, in *Philosophy*, Vol. 49, 1974, 123-134, reprinted as Bennett (1994).

<sup>27</sup> Bennett (1994), 293, says he uses the term ‘sympathy’ “to cover every sort of fellow-feeling, as when one feels pity over someone’s loneliness, or horrified compassion over his pain, or when one feels a shrinking reluctance to act in a way which will bring misfortune to someone else”.

<sup>28</sup> Bennett (1994), 297, quoted from Mark Twain, *The Adventures of Huckleberry Finn*, chapter 16.

His conscience torments him even more once Jim has told him of his plan to save money and buy his wife and children out of slavery, adding that he would steal his children if they could not be bought. Huck finally tells his conscience that “it ain’t too late, yet” and decides to paddle to the shore at daybreak, and give Jim up. “I felt easy, and happy, and light as a feather, right off. All my troubles was gone.” They return when Jim tells him that “Pooty soon I’ll be a-shout’n for joy, en I’ll say, it’s all on accounts o’ Huck I’s a free man”, that Huck is the best friend he ever had, and his only friend, and more things to the same effect. Huck tells us: “I was paddling off, all in a sweat to tell on him; but when he says this, it seemed to kind of take the tuck all out of me.” In the end, in Bennett’s interpretation, sympathy triumphs over conscience and morality.<sup>29</sup>

I dispute this interpretation. It is clear enough what counts as morality for Huck, and what according to Huck is the right thing to do: he should ‘tell on’ Jim; it was wrong to help him escape from ‘poor Miss Watson’. What Huck identifies as his conscience is also clear enough; it corresponds with his morality, telling him that he is doing the wrong thing. Bennett explains the situation as follows: “On the side of conscience we have principles, arguments, considerations, ways of looking at things: (...) ‘What had poor Miss Watson done to you?’ ‘This is what comes of my not thinking’ (...). On the other side, the side of feeling, we get nothing like that.” On this side, Bennett argues, we find no considerations or principles; only that Jim’s words “seemed to kind of take the tuck all out of me”, or “Well, I just felt sick.” There is no weighing of pros and cons. Huck simply does what he believes to be wrong, because he ‘warn’t man enough’. Huck’s perception of things is correctly represented by Bennett; but does that make his construal of the situation right? I think not. Huck was raised in a certain environment, with a certain morality; he has internalized its principles, and knows wrong from right according to this morality. When he does something wrong, he feels bad; in his own interpretation, his conscience stirs. But should we simply adopt this specific conception of conscience in our own conceptual scheme, as Bennett does? Should we accept what Huck identifies as his conscience as a fully adequate concept of conscience? I see no reason why we should, and several reasons why we should not. Bennett opposes feelings and conscience, or feelings and moral judgements, warning us not to confuse feelings of sympathy with moral judgements. But as Bennett shows in his description of sympathy, we always sympathize with

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<sup>29</sup> Bennett in fact follows the traditional line of interpretation, starting with Twain himself, but adopted by many commentators; ten years before Bennett, Levy (1964), 383, points out that the *Adventures of Huckleberry Finn* is traditionally interpreted in terms of a struggle between conscience (as a force of conventional society) and sympathy (or the heart, as a force of ‘nature’). Levy, like me, disputes this kind of interpretation.

someone *because of* something; because someone is in pain, or because someone might be harmed by one's actions. So these are not 'mere' feelings; there is a cognitive content, an intentionality to them as well. Sympathy implies some kind of judgement, for instance that someone *deserves caring attention and consideration*; that there is a reason to sympathize with him or her. When sympathy leads Huck to help Jim escape, can we not also say that this sympathy implies a moral judgement, though an unarticulated one, and one that does not correspond with the morality he was taught?<sup>30</sup> On some level, he feels that he ought to help Jim. His physical reactions are not just that, they are the physical manifestation of an unconscious prehension of value. Huck 'felt sick' when Jim reminded him of his promise. Why? Why would his body react like this, if not because the moral meaning of Jim's words was on some level understood – a meaning that conflicted with what Huck knew as his morality?

The important role of empathy and sympathy in moral development is now quite generally acknowledged.<sup>31</sup> The development of conscience depends for a large part on someone's ability to imaginatively take another's place. To act, like Huck did, from sympathy may be the proper *moral* response to the situation. When we see conscience as a mode of consciousness, as a way of being aware of a situation – not necessarily an intellectual, rational way, but also an affective, even bodily way, we can see that Huck's response to the situation is not only a moral response, but a response issuing from conscience. This is the ultimate possibility of conscience: to break with conventional morality if it is too narrow, to transcend perverse moral principles – indeed, this possibility is one of the first things that spring to mind on hearing the word 'conscience'. An

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<sup>30</sup> Clea Rees prefers to speak of 'Empathy' in Huck's case, rather than sympathy, because unlike Himmler Huck identifies himself with Jim, and experiences the emotions proper to Jim's situation. Her general analysis supports my own, however. She writes, for instance, that "emotions and feelings can be reasons for believing or doubting a moral claim"; Huck, she says, has "an emotional awareness of the most fundamental reason slavery is wrong – namely, that it pretends that slaves are not human beings or persons, in order to deny them equal moral status" (Rees [2006], sections 3 and 4). Cf. Levy (1964), 389: "It is sometimes said that Huck acts out of simple affection for Jim; but affection does not determine a moral attitude. It is more reasonable to say that Huck defies 'conscience' on the basis of an unformulated but very real sense of responsibility – to the notion that it is wrong, for example, to contribute to the enslavement of another human being. And this is a matter of conscience, too, to which we may assume Huck's experiences with Jim have contributed in a fundamental way."

<sup>31</sup> Not least due to the work of Carol Gilligan (author of *In a Different Voice: Psychological Theory and Women's Development*, Harvard University Press, Cambridge MA, 1982) and Martin L. Hoffman (for instance: *Empathy and Moral Development: Implications for caring and justice*, Cambridge University Press, New York, 2000).

adequate concept of conscience confines it neither to its everyday manifestations whenever we (are about to) break or consider breaking some moral rule, nor to its seemingly loftier variant, the conscience of the martyr. Huckleberry Finn is in a nasty situation. He has lost his moral integrity. Conscience has split in two; Huck now has to deal with two alternately dominant manifestations of concerned awareness. The one is articulate, and derives its standard from conventional morality; the other is mute, and has no articulable standard to go by – none that Huck can articulate, because all of his moral vocabulary is in service of the first.<sup>32</sup> This is the reason why ‘on the side of feeling’ Huck has no reasons, no deliberations, no words; it is not because on this side, there are only feelings, but because these feelings do not have Huck’s moral vocabulary at their disposal. Huck simply *cannot* think of his action as right, because the word has already been taken; it is not available for what he does.<sup>33</sup>

Huckleberry Finn exemplifies the ability of conscience – or of people, through conscience – to transcend conventional morality.<sup>34</sup> But he exemplifies only one particular way in which this might happen. To transcend the norms of one’s society is not necessarily a matter of feeling versus socially conditioned thinking. It may very well be the other way around: that critical thinking is necessary to transcend one’s socially conditioned emotions and feelings. But either way, where one’s own character and actions are concerned, it is essential that there is a true concern

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<sup>32</sup> Cf. Rees (2006): “Although Huck fails to recognise them as such, he is, nonetheless, aware of crucial moral reasons to reject slavery”, and “Huck has perfectly good ethical reasons to doubt the moral acceptability of slavery, but lacks the ability to recognise them as such.” Rees emphasizes Huck’s complete lack of critical abilities; “[n]ot only does he lack the skills to [reflect upon and improve upon his abhorrent beliefs about slavery], he lacks a conception of morality which even allows this as a possibility”. She rightly points out that for Huck, morality is not systematized, but merely a possibly incoherent and inconsistent set of rules to be memorized and followed.

<sup>33</sup> In Himmler’s case, there is indeed a conflict between morality and sympathy, as Bennett asserts, but there is perhaps more to it than that. The conflict is between a specific morality, meaning a specific set of moral principles, rules, and so on, on the one hand, and *moral feelings* on the other. These feelings are moral in a broader sense than Himmler’s principles. The ‘nervous and physical disabilities’ Himmler suffered, which included ‘nausea and stomach-convulsions’ (Bennett [1994], 300) might not merely be the result of an inner conflict between morality and (non-moral) sympathy; Himmler’s battle, we might speculate, is not against feelings that fail to make the proper distinctions (between worthy and unworthy people, good blood and bad blood), but rather against feelings that demand a certain measure of consistency in the treatment of human beings who do not differ from Germans in any morally significant way.

<sup>34</sup> Cf. Jacobs (2001), 90: “Someone with a conscience is someone who can see that customary practices or rationales are not adequate.”



for the moral quality of one's own contribution to the process of reality. This is the precondition for transcendence of the kind under discussion here. One's concern is not for the moral rules society has impressed upon one, nor for one's own feelings in themselves, but for something that lies beyond specific moral codes, and to which those feelings at best point. This is just another way of saying that conscience involves *ultimate* concern. This includes the demand or the goal of transcendence within itself. To be able to live up to this demand requires sensitivity to value – to something of which existing moral codes are only the petrified witnesses.

### 8.3 THE DEVELOPMENT OF CONSCIENCE AS AN EDUCATION TOWARDS OPENNESS

The previous section included some considerations relating to the development of conscience, a topic that up to now I had left undiscussed. It cannot remain so, however, for the concept of conscience that I propound is a concept of a *mature* conscience. No one is born with it, and most people do not fully attain to it, or only occasionally. The respect that anyone's conscience deserves derives not just from the attained level of maturity (insofar as that can be established), but also simply from being situated on the path towards a fully realized conscience. The latter must always be understood to be the aim to which any conscience aspires, just as a creature at any stage of its development must be understood as aiming towards its full-grown form; it is its *telos*. The logic of its development is inherent in it from the beginning.

The verb 'to educate' comes from the Latin 'educare', meaning either 'to raise' or 'to bring forth' or '(make) grow'. It is related to 'educere', which means (among other things) 'to lead out', 'to lead away', and 'to draw out'. The English 'to educe' preserves the latter meaning, especially in its figurative sense. Education, then, can also be seen as a process of 'drawing out' of what is potentially present in others, particularly children. Suppression of what might obstruct the realization of valued potentialities will be more often required in the early stages of the process than in the later stages. There is a spectrum that runs from suppression on the one side, via correction, instruction, and guidance, to stimulation and inspiration on the other side. During the process of education, the emphasis moves towards the latter. Yet the spectrum does not represent a chronological order. Instruction and correction are appropriate in the same stage, and the former may never cease. Stimulation and inspiration are (one hopes) present from the beginning, in which stage of the process education is primarily a matter of drawing out emotional responses that contribute to the happiness of the child and that of the parents. Communication, in the primary stage (before the child is old enough to receive education in the sense of instruction), occurs solely on the level of emotions and feelings.

For the development of conscience, this means that it also starts out with the cultivation of certain emotional capacities and, in their wake, moral feelings. Martin Hoffman and others have described a progressive development of empathy through a number of stages, beginning with the child's ability to distinguish between himself and other persons. At the age of two, some children will empathize with others to the extent that they will try to comfort them if they are distressed. Often, their skills in this area have not developed so far that they will realize what will have the most comforting effect on the person in distress; hence, for example, they bring the distressed the teddy bear that would comfort *themselves*. This is also an example of *sympathy*, which normally develops alongside empathy, but also constitutes a further stage when it operates independently from empathy.<sup>35</sup> This occurs when we sympathize with someone, and wish to alleviate his or her distress, without being able fully to empathize with this person's feelings.

Empathy and sympathy retain an important role with regard to the conscience of adults. It is often by empathy or sympathy that we are thrown into conscience. From their own experience, most people will know the effect of seeing starving babies on television. We know it goes on all the time, but only when we are confronted with it do we experience 'pangs' of conscience, and do we feel that we ought to do something. Of course, the feeling wears off again, and our resolve trickles away. Repetitive exposure to such images on television blunts our sensitivity to them; we may not be thrown into conscience anymore, or if we are, its intensity will be weaker, and it will not last very long. Obviously, there is also a huge difference between the effect of what we see on television and what we see in real life. The intensity of conscience depends, with most of us at any rate, on the force with which a possible trigger of conscience confronts us. An immediate confrontation has much greater effect than a mediate(d) one. Proximity is another factor of importance. We tend to empathize and sympathize more easily with those who are in some way close to us; either a close relative, or a close friend, or simply someone who lives close to us. For Adam Smith, the development of conscience was primarily concerned with correcting this partiality. One of the great problems for morality is to maintain an intimate awareness of distant suffering. And this awareness has to be awakened first.

Theorists of moral development have differed greatly over the question whether moral development is primarily a matter of increasing rationality and thereby of overcoming partiality, or rather of the cultivation

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<sup>35</sup> From a different perspective, we might say that empathy is harder to realize than sympathy, as the former requires that we do not imagine what we ourselves would feel in another person's situation, but what the other person herself feels. Empathy requires that we abstract to a high degree from our own thoughts and feelings; it cannot involve pity or compassion. See Rees (2006), section 3.1.

of moral feelings and sensitivity – feelings that are bound to be partial, even if in theory our sensitivity can be widened to include distant others. The greatest exponent of the first category is Lawrence Kohlberg; the ‘mother’ of the second is Kohlberg’s critic Carol Gilligan.<sup>36</sup> Interestingly, both can be seen as defending a particular notion of openness as the end towards which moral education attains.

Inspired by Piaget’s theory of the cognitive development of children and (like Piaget) by Kantian ethics, Kohlberg devised his famous account of moral development as a progression through six stages, two on a Pre-Conventional, two on a Conventional, and two on a Post-Conventional level.<sup>37</sup> The Pre-Conventional Level is fairly egoistic, the Conventional Level is social or moral, and the Post-Conventional could be called ‘ethical’ – it ends in moral behaviour guided by universal ethical principles. It is noteworthy that Kohlberg dubbed his fourth stage ‘The Stage of Social System and Conscience Maintenance’. Conscience, in Kohlberg’s view, plays a passing role in morality, because he sees conscience as ‘closed’. He is concerned with openness, as he believes that people should be able to transcend the defined morality of their society. Up to a point, I agree with Kohlberg. Only, I would say that *conscience*, too, can and should leave the Conventional Level behind. I disagree with Kohlberg’s identification of the universal principles of the final stage with principles of *justice*. Gilligan famously criticized Kohlberg on this point, proposing an alternative to his ethics of justice, namely an *ethics of care*. In a sense, what Gilligan proposes is a kind of openness that can be explained in terms of responsibility to the situation at hand; it is an openness towards the layout of reality.<sup>38</sup> However, the difficulty of an ethics of care is that it is virtually impossible to care equally for different persons. While many philosophers today recognize that a certain partiality towards loved ones cannot be called unreasonable, this partiality must remain within acceptable bounds. If not, the openness of the ethics of care is lost. Kohlberg and, in his wake, Habermas, favours the universalistic approach exactly to avoid the closedness of (unreasonable) partiality.

To posit openness as an important element in moral maturity, then, and to say that it is, if not *the* end, then at least one important end of moral

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<sup>36</sup> For a critical discussion of Kohlberg’s theory, see Crittenden (1999). According to Carr and Steutel “there can be no doubt that the Piaget (1932) inspired work of Kohlberg (1981) and his cognitive developmental followers has occupied the centre stage of theorising about moral education for most of the post-war period”; Carr and Steutel (1999), 242-243.

<sup>37</sup> Later versions of the system include one or more added stages.

<sup>38</sup> Cf. Dreyfus, “What is Moral Maturity? A Phenomenological Account of the Development of Ethical Expertise”, 12-14. John McDowell speaks of ‘openness to the layout of reality’ in McDowell (1998), 26. The point is taken up by Sabina Lovibond in Lovibond (2002), 19.

development and education, is nothing new. A third approach, besides those of Kohlberg and Gilligan, affirms this observation.<sup>39</sup> The virtue approach to moral education, which receives an increasing amount of attention today, holds practical wisdom (*phronesis*) to be an important goal of moral development, to be encouraged by moral education. *Phronesis*, too, entails the openness of responsiveness to the (value-dimension of the) situation at hand. The *phronimos* acknowledges value pluralism and therefore does not, for example, favour justice over care, but lets it depend on the situation which value should prevail.

I distinguish between two kinds of openness, both of which belong to the 'mature' conscience. First of all, as conscience relates to an ultimate concern, it is characterized by the openness that comes with the notion of ultimacy. A proper understanding of ultimate concern entails an awareness of the danger of absolutizing our symbolizations of the ultimate and the concrete contents we give to our ultimate concern (i.e. a specific moral-religious standard); this awareness should lead to openness, to the refusal to accept any moral-religious standard as definitive. The notion of ultimacy, then, should preclude closure. A second kind of openness is equally characteristic of what I consider to be the mature conscience: openness towards the layout of reality.<sup>40</sup> The 'objectivist' element in my definition of conscience, expressed in the words 'awareness of', is meant to draw attention to this responsiveness to the situation at hand.<sup>41</sup> The idea of awareness of the moral quality of our own contribution to the process of reality entails the

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<sup>39</sup> I should note that at present in moral psychology (in the work of August Blasi and others) moral maturity is defined in terms of the gap between moral judgements and actions (the smaller the gap, the more morally mature the person), and in terms of the degree to which morality is an integrated part of the self, or, in other words, the degree to which a person identifies with (his or her) morality. I do not dispute that these are important aspects of moral maturity, but I can imagine someone who is morally mature in all these senses, but lacks both kinds of openness that I postulate as the ends of moral development and the development of conscience.

<sup>40</sup> Cf. Childress (1979), 329: "[I]f our observations about 'consulting one's conscience' and 'conscientiousness' are accurate, a person of conscience can never view the case as irrevocably closed. He or she must be willing to reopen it in the light of new evidence." In this view of openness, elements of both kinds of openness I distinguish between are present.

<sup>41</sup> Cf. Arendt (1971), 418, where she speaks of 'reality' as "the claim on our thinking attention which all events and facts arouse by virtue of their existence". I said earlier that to be in conscience all the time is a recipe for madness; similarly, Arendt writes that "[i]f we were responsive to this claim [of reality] all the time, we would soon be exhausted; the difference in Eichmann was only that he clearly knew of no such claim at all." Eichmann was closed towards important aspects of moral reality; he lacked sensitivity to value.

idea that ‘value’ can be ingredient in our experience.<sup>42</sup> At the same time, we must recognize that openness entails an opening, and that this is of necessity an opening *in* something particular, *towards* something particular. In other words: openness is grounded in a particular perspective, which allows openness towards some things, maybe many things, but not everything – the same way a small hole in a wall will offer only a limited field of view. This does not vitiate the value of openness; the alternative is a blank wall.

We may be born with a limited openness towards the layout of reality, but we are certainly not born tolerant, which is what we should become if we attain the openness, in both of its senses, which characterizes the fully realized conscience. The development of conscience cannot, however, start out as a development of openness. Many authors have recognized this.<sup>43</sup> In Kohlberg’s developmental scheme, a Conventional Level necessarily precedes the ultimate Post-Conventional Level, which means that people will first have to learn moral rules, before they can proceed to the level of ethical principles. The virtue approach acknowledges that people, as long as they are not ‘*phronimoi*’, will have to rely on *prima facie* rules, on rules of thumb.<sup>44</sup> In Dreyfus’ phenomenology of skill acquisition, which fits in very well with a virtue approach to moral education, a level of competence, entailing ‘detached planning’ and ‘analytical rule-guided choice of action’, precedes the levels of proficiency and expertise, in which conscious reflection and planning recede into the background and finally disappear altogether.<sup>45</sup> Authors in the philosophy of education recently emphasized the same point.<sup>46</sup> This conclusion is particularly relevant

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<sup>42</sup> ‘Ingredient’ is a Whiteheadian term, signifying something’s being an element in the concrescence of an actual occasion – that is, in the formation process of an experience that constitutes a subject at a given moment.

<sup>43</sup> Erich Fromm, whose distinction between the authoritarian and the humanistic conscience I mentioned, knew that “the difference between humanistic and authoritarian conscience is not that the latter is molded by the cultural tradition, while the former develops independently” (Fromm [1967], 175). Later authors have often neglected this cautionary remark.

<sup>44</sup> See Nussbaum (1992), 68.

<sup>45</sup> This does not *necessarily* mean that the expert has acquired the characteristic of openness. Someone who is extremely skilled in a certain practice may not (immediately) be able to go about what he does in a completely different way. A European ping-pong player, for instance, may not be able to play as well using the Chinese way of holding the bat. It is likely that a more skilled player will acquire such a skill more easily, though.

<sup>46</sup> William Galston (2003), 421-422, writes that “[o]ne might (...) argue that instructing children within a particular tradition, far from undermining intellectual or religious freedom, may in fact promote it. Knowing what it means to live within a coherent framework of value and belief may well contribute to an informed adult choice between one’s tradition of origin and those encountered later in life.” Paul Standish quotes Emerson: “I have my own stern claims and perfect circle. It denies

in view of a presently popular idea, which might be called the Myth of Secular Openness.

What we know about conscience and its development suggests that people are not born tolerant or open-minded. Neither does a spontaneous generation of these qualities occur in a person's development. The 'secular' assumption, however, is that to be raised in a clearly delineated perspective on the world and our place in it, a perspective entailing some hierarchy of values, a *religious* perspective, leads to fundamentalism, a lack of openness, and intolerance.<sup>47</sup> The truth is that openness *requires* the previous acquisition of such a perspective. Only by development through such a perspective can anyone attain to openness, which consists in the careful opening up of the perspective to other values, other priorities. Those who never acquire such a perspective, will never know what it is to have one, and hence will not be able to place themselves in another's perspective in a substantial sense. The misunderstanding of and distrust towards religious people today stems from this inability of the 'non-religious' to even begin to understand the importance certain values have for the religious.<sup>48</sup>

Conscience, to sum up, presupposes an ultimate concern; openness of conscience presupposes the recognition of the ultimacy of that concern. It also depends on the cultivation of a sensitivity to value and its obstruction or destruction. This does not mean that a complete objectivity can be reached, or that someone with a mature conscience will be able to discern what is objectively right. Objectivity is merely a standpoint taken by a subject, who attempts to interfere as little as possible with the way in which the world presents itself to him or her.<sup>49</sup> Much of our experience is mediated by

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the name of duty to many offices that are called duties. But if I can discharge its debts it enables me to dispense with the popular code." He comments on it: "Yet the popular code is not dispensable in any simple iconoclasm, still less in a kind of freedom *ab initio*. It is only on the strength of, and out of, initiation into the criteria that constitute the world in which I am brought up that I can rise to the demands of this sterner regime." (Standish [2003], 229. He quotes from R. Emerson, *Selected Essays*, Penguin, New York and London, 1982, 193.)

<sup>47</sup> Naturally, I do not mean to say that all secular people think this way. I am merely drawing attention to a view of religion that has becoming an enduring, and occasionally dominant, presence in the present day climate of opinion in the Netherlands and some other Western-European countries.

<sup>48</sup> The misunderstanding belongs also to the secular self-understanding. People may *think* they are 'free' in their thought, but they have grown up in a certain perspective as much as any Muslim or Christian. Only, this perspective is much less clearly delineated. Western people are confronted with an enormous variety of ideas, practices and images. In response to this, people's outlook on life tends to lack unity and articulation. Nevertheless, they are equally incapable of questioning their own way of life, of openness to criticism, as the average orthodox Christian or Muslim.

<sup>49</sup> Iris Murdoch (1974) explains this in terms of minimizing the influence of 'self', and developing an openness towards reality through 'looking' and 'loving attention'.

concepts, and the subjective form of experience that is conscience is determined by the subjective aim, that is, by the unity at which the subject is oriented.<sup>50</sup> Nevertheless, the subject is not closed to the world, but participates in it; an open conscience is a valuable and at least partially attainable ideal. What the problem of ultimacy (which entails openness) and the concrete embodiment it begets (which has a tensional relationship with that openness) means in the context of conscientious objection will be discussed in chapter 14: “Aspects of Conscientious Objection (2)”. Now, it is time to look more closely at the notion of ultimate concern.

#### 8.4. ULTIMATE CONCERN

Paul Tillich defined faith as “the state of being ultimately concerned”.<sup>51</sup> He speaks of religion in a narrow (conventional) sense, and in a broad sense; in the latter case, he uses the same definition he uses for faith. For both, he speaks of “being grasped by an ultimate concern”.<sup>52</sup> A concern that becomes ultimate in man’s life, that claims ultimacy, “demands the total surrender of him who accepts this claim, and it promises total fulfillment even if all other claims have to be subjected to it or rejected in its name”.<sup>53</sup> What Tillich tries to express by means of the term ‘ultimate concern’ – but he is the first to admit that the term has its shortcomings, for which reason he also speaks of ‘infinite passion’ (after Kierkegaard) and is willing to consider infinite concern, ultimate seriousness, and other terms, each with their own shortcomings – is man’s ability to be grasped by a concern that transcends all our normal, daily concerns, as well as our long-term ambitions. Human beings, some more (often) than others, experience this, which cannot adequately be put into words, but only expressed symbolically, which many people do by means of the symbol ‘God’.<sup>54</sup> There are usually many other

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With respect to the first, see Murdoch (1974b), 66ff; Murdoch (1974c), 90-93, 95, 97, 99-104. I have referred to the other concepts before.

<sup>50</sup> See the general introduction, i.2.2. Again, I am using the Whiteheadian terminology, designed for actual occasions, on the level of persons.

<sup>51</sup> Tillich (1957), 1.

<sup>52</sup> Brown (1965), 4: “If religion is defined as a state of ‘being grasped by an ultimate concern’ – which is also my definition of faith – then we must distinguish this as a universal or large concept from our usual smaller concept of religion which supposes an organized group with its clergy, scriptures, and dogma, by which a set of symbols for the ultimate concern is accepted and cultivated in life and thought. This is religion in the narrower sense of the word, while religion defined *as* ‘ultimate concern’ is religion in the larger sense of the word.”

<sup>53</sup> Tillich (1957), 1.

<sup>54</sup> Tillich (1957), 2-3, gives the example of Deuteronomy 6: 5: “You shall love the Lord your God with all your heart, and with all your soul, and with all your might”.

symbols, of course; in the case of Christianity, there are, for instance: Christ, the cross, the trinity of the Father, the Son, and the Holy Ghost, and so on. Tillich conceptualizes that which people can only express symbolically in terms of 'ultimate concern'.

Ultimate concern gives meaning and direction to a person's life.<sup>55</sup> It is that which ultimately makes sense. When Gandhi, whose conception of religion in many respects closely resembled Tillich's, said that "Truth is God", he expressed that what is ultimately meaningful in life is Truth; better, that Truth is what makes life meaningful.<sup>56</sup> Though this is not what necessarily distinguishes ultimate from non-ultimate concern, ultimate concern may be worth dying for. There are striking examples from Nazi Germany of people who rather died than betray their ultimate concern and thereby themselves. They died in order to live; the alternative was to live and be dead.<sup>57</sup> In conversations with students, Tillich also made clear that ultimate concern was not a matter of life or death in the ordinary sense, but

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"This," Tillich says, "is what ultimate concern means and from these words the term 'ultimate concern' is derived."

<sup>55</sup> I have been asked (and I do not doubt that Tillich himself was often asked the same question) whether it is really true, as Tillich maintains, that everybody, or virtually everyone, has (an) ultimate concern. Would it not be possible for someone to have a set of different concerns, without one of them being ultimate? My answer is that this question implies a misunderstanding of the meaning of 'ultimate concern'. The term does not point towards a hierarchy of concerns in which ultimate concern itself takes up the highest position. Rather, it indicates something that lies 'beyond' all specific or concrete concerns. It does not coincide with any concrete concern, but it is the denial of the absoluteness of all concrete concerns. When someone has a number of different concerns, none of which he would wish to call 'ultimate', this might in fact be an excellent illustration of what 'ultimate concern' means. (S)he expresses that none of his or her concrete concerns should be absolutized, but also that the balance between them matters – that something ultimately matters. This person's rejection of a hierarchy of concerns in which one concrete concern is ultimate is (likely to be) a *moral* rejection, which shows that in the end it is not indifferent how one ranks or balances one's concerns. Besides, (s)he would perhaps be willing to give up one of his or her concerns, perhaps two, but certainly not all of them. (S)he will find it important to *have* such concerns, and behind this (admirable) attitude lies ultimate concern. See Brown (1965), 20, and especially 26-27.

<sup>56</sup> Parekh (2001), 35. Parekh notes that while Gandhi first preferred notions like 'eternal principle', 'supreme consciousness or intelligence', 'cosmic power', 'energy', 'spirit', or 'shakti', to speak of God, "[l]ater in life he preferred to speak of *satya* (ultimate reality or Truth), and regarded this as the 'only correct and fully significant' description of God". Gandhi here makes the mistake of absolutizing a specific symbolization of the divine.

<sup>57</sup> See Gollwitzer, Kuhn, and Schneider (eds.) (1958); Philippa Foot refers to this book in Foot (2003), 95.



rather one of 'to be or not to be'.<sup>58</sup> This possibility, of preserving being by dying, was also more clinically expressed by Luhmann when he explained that the personal system may choose the death of the organic system, freedom of conscience being a 'Freiheit zum Tode'.

The example from Nazi Germany brings us to the heart of this book. With these people, ultimate concern manifests itself as conscience. We feel that there is Truth, that there is Goodness, that there is Beauty, even though neither Truth, nor Goodness, nor Beauty lies ultimately within our grasp. When someone says that he knows the full truth about anything, we know this is not true. Ultimate concern often grasps a person in one of these forms: Truth, Beauty, or Goodness. In the example above, we are dealing with ultimate concern in its aspect of the Good. But, even though each of these terms knows its own ultimacy (the Good never being synonymous with a good), they are already limitations of the Ultimate. For there is more than Goodness in the world, and someone who surrenders himself fully to Goodness may become blind to Beauty or Truth. On the other hand, one may wonder whether the good that is contrary to Truth and Beauty is really still good – one may wonder, that is, whether they do not all interpenetrate each other, offering different aspects of the ultimate, without completely obscuring the other aspects.

"Faith as ultimate concern is an act of the total personality. It happens in the center of the personal life and includes all its elements. (...) It is not a movement of a special section or a special function of man's total being. They are all united in the act of faith."<sup>59</sup> Yet the whole is more than the sum of the parts. With respect to conscience, this entails a denial of the faculty view. In conscience, the whole person is involved; for, in Whiteheadian terms, a subject at any given time *is* the concrescent experience at that time, and the subjective form of this experience is conscience. It is *how* we experience what we experience, and as we are made up of that experience, it is how we are at that time – it is *who* we are then.<sup>60</sup> The distinction between subject and object, though impossible to avoid in analysis, is in the end artificial. Hence Tillich writes that "[t]he term 'ultimate concern' unites the subjective and the objective side of the act of faith – the *fides qua creditur* (the faith through which one believes) and the *fides quae*

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<sup>58</sup> Brown (1965), 20-21.

<sup>59</sup> Tillich (1957), 4.

<sup>60</sup> Whitehead's term 'subject-superject' is also appropriate here, which expresses that the subject, guided by its subjective aim (which gives to the whole of the experience the subjective form of purpose), projects itself into the future; similarly, part of conscience is the aim at a future self. Cf. McCready (1996), 97: "By anticipating a future self, conscience guides the present one." McCready goes on to elaborate on this in a way reminiscent of Luhmann: "The conscience thus produces coherence of the self over time. It brings cognizance of oneself as a temporal being and holds the parts of the self together diachronically and synchronically."

*creditur* (the faith which is believed). The first is the classical term for the centered act of the personality, the ultimate concern. The second is the classical term for that toward which this act is directed, the ultimate itself, expressed in symbols of the divine. This distinction is very important, but not ultimately so, for the one side cannot be without the other.”<sup>61</sup> “In terms like ultimate, unconditional, infinite, absolute, the difference between subjectivity and objectivity is overcome.” The word ‘ultimate’ in ‘ultimate concern’ applies both to the ‘object’ of the concern and to the subjective side of the concern, that is: to someone’s being not simply concerned, but *ultimately* concerned.

“This character of faith,” Tillich says, “gives an additional criterion for distinguishing true and false ultimacy. The finite which claims infinity without having it (as, e.g. a nation or success) is not able to transcend the subject-object scheme. It remains an object which the believer looks at as a subject.”<sup>62</sup> This is not a matter of yes or no, black or white: there are “many degrees in the endless realm of false ultimacies”. But any false ultimacy reveals itself as such in the end, Tillich asserts: “The inescapable consequence of idolatrous faith is ‘existential disappointment’, “a disappointment which penetrates into the very existence of man”.<sup>63</sup> This problem of distinguishing ‘true’ from ‘idolatrous’ faith, ultimate concern from false ultimacies, is pressing for many readers of Tillich’s work. The students in the dialogues with Tillich published by Brown repeatedly ask for clarification. Brown phrases what he perceives as their problem with the concept of ultimate concern as follows: “I think the question that hangs all over this is: Are there any characteristics of ultimate concern in itself which will enable us to distinguish between genuine religion, which functions in the ultimate sense, and ‘religion’ associated with distorted secular movements? When we speak of ultimate concern, is it in any way a discriminating term? Does it help us to identify and distinguish one faith from another?”<sup>64</sup> Tillich answers: “There *is* a criterion, namely, the word ‘ultimacy’; and ultimacy means nothing finite. Nothing which by its very nature is finite can rightly become a matter of ultimate concern.”<sup>65</sup> He then gives an example, saying that “many boys are ruined because they make their mother their ‘ultimate concern’”, the consequences of which “are always destructive”. “The consequence is always destructive, because this finite then destroys other finites.” A boy who defies his mother, for instance, will not be able to have normal relationships with other women. Another example is Nazi Germany,

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<sup>61</sup> *Ibid.*, 10.

<sup>62</sup> *Ibid.*, 11.

<sup>63</sup> *Ibid.*, 12.

<sup>64</sup> Brown (1965), 24.

<sup>65</sup> *Idem.*

in which nation and race were seen as ultimate, the destructive consequences of which are well-known.<sup>66</sup>

As soon as a symbolization of the ultimate, or any concrete embodiment of ultimate concern, comes to *replace* the ultimate, it becomes idolatrous, or, as Tillich also calls it, demonic. This means that ultimate concern includes within itself a critical principle – a warning to remain open to the ultimate, and not to absolutize one’s finite expressions of it. It also means that there is always a tension between the element of ultimacy and the concrete shape it is given.<sup>67</sup> There are dangers on two opposite sides: on the one hand there is the danger of profanization (or secularization), which means that a (quasi-)religion loses its original substance, becoming empty – the ultimate concern fades; on the other hand there is the danger of demonization, which happens when particular symbolizations are absolutized, and all others repressed. In both cases, a fundamental openness is lost. In the first case, openness has given way to apathy or lethargy; there is no longer any feeling for the ultimate. In Heideggerian terms: people are so much lost in the They that they do not hear the Call – and yet it may still happen. The possibility for someone to be grasped by ultimate concern is never lost. In the second case, openness has given way to closedness; there is no openness because people see no need for it anymore: do they not already have what they were looking for?

Some symbolizations and embodiments of the ultimate are more likely to lose their transparency than others. The Jewish faith forbids any visible image to be made of God; moreover, God’s name is not to be spoken or written (in full). This way, it contains within itself a principle to prevent demonization. In Tillich’s interpretation of the Christian symbol of the crucifixion, Christianity has a similar principle: God has become incarnate, but the crucifixion symbolizes the inadequacy of any embodiment or incarnation of the divine. The protestant conscience (if it is not itself demonically perverted) functions as a similar critical principle; it embodies openness, it is a window that can always be opened. Nationalism, communism, liberalism, and other ‘quasi-religions’, as Tillich calls them, do not contain such a principle within themselves. Hence, the likelihood that they lose their transparency is even greater. But there are no guarantees in this area, either way. Neither is there an ultimate criterion to distinguish ‘true’ from ‘false’ religion (in the broad sense). All we have is the criterion of ultimacy, and the visible consequences of idolatry. To want more is to desire to make an object out of ultimate concern, which is by definition impossible. If there were precisely definable criteria in this matter, it would not be ultimate. For many – for me, too – this inescapable vagueness will be hard to bear. We want certainty, not just with respect to the ultimate, but with

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<sup>66</sup> The examples are Tillich’s.

<sup>67</sup> See chapter 14, “Aspects of Conscientious Objection (2)”.

respect to our symbolization of the ultimate as well; we want it to be a correct representation of the ultimate. This is caused by our application to the infinite of criteria that belong to the finite. We will have to live with the uncertainty and the tension.

Voegelin writes of the meditative origin of the philosophy of order. Our thought on the present matter, too, has a meditative origin. We are thrown back on our own experience of the ultimate, on our own religious experience (religious in the broad sense), if we wish to make sense of the concept of ultimate concern. Speaking for myself, I can say that it is often a negative experience, in the sense that it is an experience of the failure of words, rather than one that is readily articulated in words; an experience of not-something, rather than something. And yet one experiences something. However unsatisfactory such reflections may be, “[w]e must,” as Tillich says, “be able logically to distinguish the *concept* of ultimate concern and the *content* of ultimate concern”. He points out that Kant did so, too, when he distinguished the unconditional character of the Categorical Imperative from its variable contents.<sup>68</sup> Similarly, we must be able to see the symbol of conscience as an expression of ultimate concern, and understand conscience conceptually as a mode of consciousness in which we experience things in light of an ultimate concern, without claiming anything with respect to the ‘contents’ of conscience.

The above problematic goes to the heart of the philosophy of religion. It is the problem of the possibility of immediate (in the sense of not conceptually mediated) experience. Central to Friedrich Schleiermacher’s philosophy of religion (which Tillich’s resembles in certain respects) is an immediate experience of God, which he famously called the ‘feeling of absolute dependence’ (‘Gefühl schlechthinniger Abhängigkeit’).<sup>69</sup> In *Religious Experience*, Wayne Proudfoot attacks the notion of immediate experience, and Schleiermacher’s notion of it in particular. According to Proudfoot, there can be no feeling ‘of’ anything that is not mediated by concepts. We cannot call an experience a ‘feeling of absolute dependence’ if it was not mediated by

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<sup>68</sup> Brown (1965), 21-22.

<sup>69</sup> On Schleiermacher, see Tillich (1972), 73-93; with regard to the ‘feeling of absolute dependence’ esp. 77-83. Tillich (*ibid.*, 7-8) emphasizes that by ‘Gefühl’ Schleiermacher did not mean a merely subjective feeling, although it would be interpreted as such by many later thinkers: “Der beste Beweis dafür, daß Schleiermacher unter ‘Gefühl’ keine subjektive Empfindung verstand, ist die Tatsache, daß er in seiner Systematik, der ‘Glaubenslehre’, den Ausdruck ‘das Gefühl schlechthinniger Abhängigkeit’ gebraucht. In dem Augenblick, in dem er Gefühl mit schlechthinniger Abhängigkeit verband, transzendierte er das Psychologische, denn jede Art von Gefühl im psychologischen Sinn ist bedingt; es ist ein in dauernder Veränderung begriffener Strom von Empfindungen, Gedanken, Willensregungen und Erfahrungen. Die Erfahrung des Unbedingten ist etwas von diesem subjektiven Gefühl völlig verschiedenes.”

these concepts; therefore, Schleiermacher does not give a definition of religion in general, for not every religious person has the concept of ‘absolute dependence’.<sup>70</sup> I agree with Proudfoot to a certain extent; to describe an experience as a feeling of absolute dependence gives it a definiteness that it did not have; in that sense, the description is not fully adequate. But as I maintain (see the general introduction) that language lags behind experience, this is where my agreement with Proudfoot ends. Someone who has never learned a language and does not know the (linguistic) concept of fear can still experience fear. Similarly, the possibility of experiencing the ultimate does not depend on someone’s having the concept (or a concept) of the ultimate.

Perhaps the most adequate way to describe (or evoke the sense of) religious experience of this sort (i.e. immediate experience), is by saying in Buber’s terms (although Buber would avoid the term ‘experience’ itself) that this type of experience ‘discloses’ without ‘revealing’.<sup>71</sup> Nothing concrete is experienced, and yet something is prehended. In the case of conscience, no concrete moral truths are apprehended, but nevertheless there is disclosure of such a kind that the reality of value, of significance, cannot (or no longer) be denied, and that we are stimulated and inspired to pursue realized (and the realization of) value.

#### 8.5. CONSCIENCE, LUMINOSITY, AND INTENTIONALITY

I have repeatedly spoken of the ‘contents’ of conscience, thereby suggesting that conscience has the form of intentionality. If we take ‘intentionality’ in its Voegelinian sense, this is not necessarily the case. Just as consciousness may have the structure of intentionality or luminosity, so conscience can have either structure. Like consciousness, conscience can also become the object of reflection, which means that the consciousness of this consciousness or conscience has the form of reflective distance. Finally, often enough, people have tried to turn conscience into an object for the intentional conscience. The way Voegelin understands ‘intentionality’, this is impossible, for conscience does not belong to ‘thing-reality’. In a less restrictive sense of ‘intentionality’, where what is intended need not be an object belonging to ‘thing-reality’, it is possible for conscience to be the intentional object of consciousness – but then Voegelin would speak of reflective distance.

It is in reflective distance that we are able to discover the structures of consciousness Voegelin calls ‘intentionality’ and ‘luminosity’. As conscience is a mode of consciousness, these are also structures of conscience. In the previous chapter I have pointed out as a flaw of many recent concepts of conscience that they forget the intentionality of conscience; I also stress the importance of the intentionality of conscience in

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<sup>70</sup> Proudfoot (1985).

<sup>71</sup> Buber (2004), 75.

part III. It is a good thing to remember that conscience is about something; but I would say it is not necessarily about existent objects, although the intentional consciousness is prone to regard its object as such.<sup>72</sup> That means I have used (and will use) the term ‘intentionality’ in a broader sense than Voegelin does, except of course where I explicitly speak of Voegelin’s concept. With my use of the term ‘intentionality’, I link up with cognitive emotion theory, which stresses the intentionality of conscience, by which is meant the fact that an emotion is not merely something happening in the body (nor the perception of bodily changes), but also relates to something else.<sup>73</sup> Fear is fear of something, even if this is something imaginary. The emotions in our dreams have intentional objects, too. Now, a monster in a dream could still be said to belong to thing-reality, but things get more complicated when we are dealing with something like ‘respect’, which is not a basic emotion. About what ‘thing’ is respect? It is not just about the person whom one respects. The same goes for conscience. It is an awareness (a concerned awareness) of ‘the moral quality of our own contribution to the process of reality’ – and this is not an object belonging to thing-reality. The way I use the term ‘intentionality’, then, it does not refer purely to the subject apprehending an object, but it takes up within itself elements that transcend the subject-object distinction, elements of value, elements of which one cannot become aware if luminosity did not also play its part. So my use of ‘intentionality’ when I speak of the ‘intentionality of conscience’ includes within itself elements of what Voegelin calls intentionality and luminosity; what I mean by the ‘intentionality of conscience’ is that conscience is not self-enclosed, but participates in reality, which means that reality has ‘importance’ in conscience. This means that another danger, besides forgetting the intentionality of conscience altogether, is that one forgets the element of luminosity, thinking that conscience is only intentional in Voegelin’s sense – that it perceives existent objects outside itself.

The Voegelinian distinction between intentionality and luminosity is still highly important and useful, even if I include both elements in what I call the ‘intentionality of conscience’, because it draws attention to the possibility that the balance between the two might be upset; historically, the

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<sup>72</sup> See Voegelin (1984) (Collected Works edition), 391: “[A]n aura of externality clings to the object of consciousness”.

<sup>73</sup> I am thinking of the work of Robert Solomon, Martha Nussbaum, and others; a partly similar (but also importantly different) approach is that of social-constructionists like James Averill. Elements of both types of approach come together in Lauritzen’s definition of emotion: “I suggest that an emotion be defined as a culturally mediated experiential complex that consists of such diverse elements as pronounced physiological activity, expressive bodily responses, feelings, desires, beliefs, and evaluative judgments. Further, I suggests that we treat the cognitive components of the complex, i.e., beliefs and judgments, as the linchpin holding these various elements together.” (Lauritzen [1988], 316.)

danger has been that luminosity was forgotten and moved into the background. Intentionality tends to gain dominance over luminosity. When I speak of the ‘intentionality of conscience’, I assume a proper balance between the two; when the element of luminosity fades into the background, conscience is no longer ‘about something’ in the right way anymore.

In thinking *about* conscience, rather than within conscience itself, what Voegelin calls ‘intentionality’ has also become dominant, which has led to a deformed view (and a rejection) of conscience. The previous seven chapters have dealt with that point. Unlike in the case of intentionality, it is impossible (or meaningless) to distinguish between the luminosity *of* conscience and a luminosity of consciousness in which we become aware of conscience. They are one and the same thing. That means that the process by which conscience increasingly came to be regarded indicatively, as an existent object, was a process in which an important element of experiences of conscience was lost sight of – that element that is always less conspicuous, because it lacks the clarity and distinctness of the objects of the intentional consciousness.

#### 8.6. THE MORAL QUALITY OF OUR OWN CONTRIBUTION TO THE PROCESS OF REALITY

Conscience is about something, but about what? Well, about “the moral quality of our own contribution to the process of reality, including our own being”. But what, first of all, do I mean by ‘moral quality’?

I use the term ‘moral’ in a much broader sense than its meaning of that which corresponds to the *mores* of a particular community. The notion of morality I have in mind is (roughly) Whiteheadian. Whitehead distinguishes morality from what he usually calls ‘morals’ (though sometimes, confusingly, also ‘morality’); the latter is morality in its narrow sense, something which Whitehead almost despises, as is clear from the following remark:

“[T]he defence of morals is the battle-cry which best rallies stupidity against change. Perhaps countless ages ago respectable amoebae refused to migrate from ocean to dry land – refusing in defence of morals.”<sup>74</sup>

Morality in the broad (Whiteheadian) sense of the term “consists in the control of process so as to maximize importance”.<sup>75</sup> It “is always the aim at that union of harmony, intensity, and vividness which involves the

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<sup>74</sup> Whitehead (1964), 268. Paul Arthur Schilpp has collected a small number of quotations from Whitehead’s work to the same effect, in Schilpp (1991) note 1, 563-564. See also Whitehead (1968), 76: “[W]e must remember that morals constitute only one aspect of the good, an aspect often overstressed.”

<sup>75</sup> Whitehead (1968), 13-14.

perfection of importance for that occasion”.<sup>76</sup> Whitehead is most of the time not so much concerned with separate moral judgements or moral actions, nor with specific moral purposes, but with morality as a factor in the process of reality. Every person participates in process, and through participation modifying it *and* him- or herself. When Whitehead explains that moral responsibility is made possible by the fact of the final self-realization of actual entities, he is clearly thinking on the level of persons as well as actual occasions or entities.<sup>77</sup> Beyond moral responsibility, there is duty, which “arises from our potential control over the course of events”.<sup>78</sup> Our control is limited, of course; hence “our action is moral if we have thereby safeguarded the importance of experience so far as it depends on that concrete instance in the world’s history”.<sup>79</sup>

What all this comes down to, I believe, is the following: as participants in process, we are more or less directly connected to every other element in process. We can imagine this as a global, even globe-transcending, network in which we all have our place. To make it more concrete: imagine you are connected to everyone else in the world by means of threads of varying length, thickness and strength. We can also include the importance of the social, of groups and institutions, in this image, by imagining recognizable patterns with a relative stability over time in this network; also, we can imagine various ways in which to accommodate for the importance of structural factors, but we need not go into this here. With every move we make, we exert some influence on the network, via the threads by which we are connected to it. The network has a certain flexibility of course, and it is not difficult to see where our influence will generally be greatest. We can also see how patterns may emerge by which due to the collective activity of groups of people in one part of the world, the network may become severely distorted on some other part of the globe. When we distort the network, this has consequences for the experience of other people (or creatures, generally). We inhibit the movement (in either a literal or a figurative sense) of others, and this constitutes a form of evil: “The nature of evil is that the characters of things are mutually obstructive.”<sup>80</sup> ‘Mutually’, Whitehead says, because he focuses on the harmony or discord between the elements that go into the concrescence of an actual occasion. His view of good and evil is thoroughly aesthetic: “the feeling of evil in the most general sense, namely physical pain

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<sup>76</sup> Ibid., 14.

<sup>77</sup> Whitehead (1985), 255: “[T]he actual entity (...) determines its own ultimate definiteness.”

<sup>78</sup> Whitehead (1962), 23.

<sup>79</sup> Whitehead (1968), 15.

<sup>80</sup> Whitehead (1985), 340.



or mental evil, such as sorrow, horror, dislike” is the ‘type of inhibition’ he calls ‘aesthetic destruction’.<sup>81</sup> This is the opposite of importance.

Ethics (or morality) and aesthetics are not fully separable in Whitehead’s thought, not least because aesthetics is a very broad notion in his work, staying close to its original meaning. On the other hand, ‘beauty’, often seen as the subject of aesthetics, is also a much-encompassing notion for Whitehead, so that aesthetics is still very much concerned with beauty. Beauty and goodness are not the same thing, though it is hard to point out where they go apart.<sup>82</sup> An important difference between the two (in Whitehead’s work) seems to be that beauty is concerned with the present, with experience *now*, whereas moral value implies a concern for the future, for future importance. Moral value also seems to imply a *wider* concern: “Morality of outlook is inseparably conjoined with generality of outlook.”<sup>83</sup> Both the spatial and the temporal reach of moral concern are greater than that of the concern for the value of beauty. The distinction becomes blurred, however, when we are dealing with ultimate concern in its guise of inspiration. On hearing the word ‘inspiration’ the example of an aesthetic lifestyle naturally comes to mind. Although the good and the beautiful are characterized by different kinds of obligation, by their own ‘(I) must’, in the way people are struck by them, this difference fades when ultimate concern takes the form of inspiration, which always contains an element of beauty within itself. Ugliness and injustice ‘appeal’ to us to be redressed in very different ways; yet each asks to be set right.<sup>84</sup>

So far, I have left out an important aspect of ‘importance’, and thereby of morality. Importance combines two elements within itself: finiteness and infinity, the one and the many. Within the finite world of fact, which is characterized by multiplicity and diversity, value is realized. Value depends on limitation by realization in matter of fact; nevertheless, it points beyond matter of fact, to the ideal. Ethics is made possible by the inclusion by the actual of “not-being’ as a positive factor in its own achievement”.<sup>85</sup>

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<sup>81</sup> Whitehead (1964), 255-256.

<sup>82</sup> Iris Murdoch also struggles with this question. She points out (referring to Plato) that, whereas it seems possible to experience the transcendence of the Beautiful, this does not seem to be the case with the Good (Murdoch [1974b]).

<sup>83</sup> Whitehead (1985), 15; he continues: “The antithesis between the general good and the individual interest can be abolished only when the individual is such that its interest is the general good, thus exemplifying the loss of the minor intensities in order to find them again in a wider sweep of interest.”

<sup>84</sup> The difference cannot be said to lie in that the good is *required*, while the beautiful is in a sense gratuitous; the good is not exhausted by what is morally required – nor, I think, would we still say that beauty is merely gratuitous if the world were all of a sudden devoid of it. On the other hand, it might be suggested that beauty only becomes mixed with goodness when the latter goes beyond the morally required.

<sup>85</sup> Whitehead (1985), 189; before that in Whitehead (1938), 206.

Importance depends on the extent to which the past contributes to the present and the future, as well as on the extent to which the ideal in the form of concrete possibilities for value is realized. This involves the factors of harmony, intensity, and vividness referred to before. Morality, then, is concerned with the influx of value in the world of fact; its aim, we might say, is to 'let be' as much as possible – in my network metaphor: to slacken the threads with which we are connected to others, in order not to inhibit the realization of value; or it may require more positive action: to adjust the pattern in order to maximize the possibilities for the realization of value.<sup>86</sup>

My concept of conscience as “a concerned awareness of the moral quality of our own contribution to the process of reality, including our own being” refers to a concerned awareness of the place we occupy in our perspective of the world and the possibilities for the realization of value (good or bad) that come with that station. The term ‘contribution’ was deliberately chosen to include the idea of ‘importance’. Ordinarily, of course, we do not entertain such grand views of ourselves in relation to the rest of the world. We tend to feel guilty when we have broken a moral rule (‘moral’ in its narrow sense) or betrayed one of our moral principles. But these point beyond themselves to a wider perspective of value (which is why Tillich speaks of a ‘transmoral’ conscience); they do so *in practice* only when conscience attains the necessary openness.<sup>87</sup> That ‘morality’, in its narrow sense, points beyond itself is also the reason why conscience cannot be defined as a purely ‘moral’ (again in the narrow sense) phenomenon; it relates to ultimate concern, and therefore it is by definition religious, whether it is so in a more traditional sense or not.<sup>88</sup>

This requires some further explanation. Conscience can be said to be a moral phenomenon in different ways. It can be a moral phenomenon in the sense that it is concerned with moral value, or in the sense that its concern is with ‘the control of process so as to maximize importance’, in which case the business of conscience is exactly that of morality in the Whiteheadian sense, only specified to one person. The first possibility can be analyzed further into two ways in which conscience may be concerned with moral value. Conscience may be concerned with the application of moral rules out of concern with those rules, this particular morality, themselves. Alternatively, its concern may be directed at moral value as realized in the

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<sup>86</sup> Cf. Williams (1963), 190: “Moral obligation is the claim of possible good upon the free decision of any creature who is able to consider the effect of his action in relation to that good.”

<sup>87</sup> See Tillich (1969), chapter 4: “The Transmoral Conscience”.

<sup>88</sup> As a final remark concerning ethics and aesthetics, we can perhaps say that, so long as we are dealing with morality in the narrow sense of the word, the difference between the morally good and the beautiful (understood narrowly, as a quality of appearance) remains clear, while as soon as we move beyond this level towards that of ‘value’, the distinction starts to evaporate.

world, as when the injustice of a particular situation is perceived. As I see it, the first should at most be a passing stage in the development of conscience. But the fully realized conscience is concerned both with moral value in the second sense, and with non-moral value. This, too, can be understood in two ways. The first was already mentioned: a concern for the moral quality of our own contribution to the process of morality can be seen as a concern for the manner and degree in which that contribution influences process so as to maximize importance. The business of conscience is then that of morality. Alternatively, we might construe conscience's concern with non-moral value as an awareness of the limitations of the moral. A fully mature conscience is coloured by the awareness that there are other types of value besides the moral, in other words: by a perspective on the moral and on itself.

The mature conscience, at any rate, transcends concern with moral value alone, but its openness to non-moral value nourishes its sensitivity to moral value. When conscience is concerned with non-moral value, it is still 'moral', though its object is not; this allows people to transcend the limitations of particular moral codes, and it enhances the sensitivity to moral value as realized in the world, while at the same time exposing this as one type of value among others, between which a delicate balance must be struck.

## 8.7. CONSCIENCE AND EXPERIENCE

### 8.7.1. Experiences of conscience

Luhmann wrote: "Das Gewissen ist ein erlebbares Phänomen (...)." <sup>89</sup> That is to say: conscience can be experienced. I speak of 'experiences of conscience' throughout this book. But how must the relation between conscience and experience be understood?

'Conscience can be experienced' is not a statement of the same category as 'trees can be seen', or 'the temperature of the water can be felt'. That we would not normally speak of 'experiencing' water temperature (nor, in German, of 'erleben') is significant in this respect. To experience, let alone 'erleben', is something that involves the whole subject in a way that perception by particular senses does not. 'To experience' is but a feeble translation of 'erleben', which is to live through something, but without the negative connotations of this phrase – it is to 'relive', without the 're'. But people may speak of 'experiencing' Disneyland Paris or 'The Phantom of the Opera', and this is still not the same sense of 'experiencing' as when we say that conscience can be experienced. The reason is that conscience is not *there*, waiting to be experienced the way Disneyland Paris is, or a musical that awaits its audience at a particular date, time, and venue.

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<sup>89</sup> Luhmann (1973), 223.

A better analogy would be with joy, or sorrow, or anger. ‘Anger can be experienced’; ‘Zorn ist ein erlebbares Phänomen’; both sound fine to me. Anger is not something out there, like Disneyland Paris, waiting for someone to (pay a lot of money and) experience it. In a sense, it *is* the experience. When we say that anger can be experienced, we speak of it as a potentiality of experience, as a possible subjective form an experience might take. We have abstracted ‘anger’ from all those experiences we call ‘angry’; in other words, there is a certain class of experiences we recognize *as* a particular class, and we use the word ‘anger’ to denote the defining characteristic of this class. Similarly, we use the concept of conscience to refer to what we take to be the defining characteristic of a specific class of experiences – namely, the experiences we have in that mode of consciousness we also speak of as conscience. This immediately points to a difference between conscience and anger (or joy, or sorrow, or some other emotion or feeling), for I would not as readily speak of anger as a mode of consciousness. Anger is a subjective form of experience; it is a mode of feeling, perhaps.<sup>90</sup> But conscience is a more complex kind of subjective form. Not in virtue of its intentionality (in my broad sense of the word), for anger can be intentional as well, but because it involves an awareness of morally salient characteristics of the situation, reference to a moral standard, a complex of feelings, and possibly many other (cognitive) elements, that it integrates into itself.<sup>91</sup>

When I speak of conscience as a ‘concerned awareness (etc.)’, I leave open whether this awareness is predominantly cognitive in nature or not; usually, it is not. Freud held that the activity of the super-ego and of the conscience largely takes place in the ‘unconscious’; without (fully) accepting his views regarding the formation of the super-ego and the conscience, I agree with the view that much of conscience passes beyond the field of vision of the mind’s eye, so to speak. Conscience does not necessarily involve the articulation into verbal thoughts of that of which it is an awareness.

### 8.7.2. Experiences of conscience and the definition of conscience

Kittsteiner, when he is more than halfway through his book, writes: “Am Ende des Durchgangs durch die Begriffsgeschichte des Gewissens zwischen Reformation und Aufklärung steht eine Frage: was soll es eigentlich heißen, wenn man sagt: Das Gewissen bei Luther, das Gewissen bei Balduin, (...) beim Thomasius oder bei Kant? Die Redewendung ‘das Gewissen bei...’ unterstellt immer so etwas wie eine anthropologische Substanz, die ‘bei’ den

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<sup>90</sup> Whitehead sometimes speaks of the subjective form as the ‘affective tone’ of experience (see Hughes [1991], 278). Perhaps this allows us to make a distinction between different types of subjective form, conscience being a mode of consciousness, and joy, anger, et cetera being affective tones.

<sup>91</sup> See 8.2.1.

verschiedenen Denkern nur verschieden ausgelegt worden ist.”<sup>92</sup> He shows himself an historian *pur sang* when he says: “Diachrone Begriffsgeschichte täuscht eine Kontinuität vor, die sich in dem Augenblick auflöst, wo nach den kulturellen Bezügen eines Begriffs gefragt wird. (...) Der Begriff ‘Gewissen’ ist nur der Inbegriff aller Erfahrungen, die je mit ihm gemacht worden sind.”<sup>93</sup>

I agree with the centrality afforded to experiences here, but otherwise disagree with Kittsteiner’s suggestion. Leaving aside that he seems to deny the possibility of the misidentification of experiences as experiences of conscience, I would say that he exaggerates the difference between the experiences of conscience in different historical settings – differences, I might add, that are probably smaller than those between certain philosophical *concepts* of conscience, with their tendency to absolutize one particular aspect of the phenomenon.<sup>94</sup> Against Kittsteiner, I have emphasized the *equivalence* of experiences of conscience. I have put forward the symbol of conscience as a framework with a large stability over time, which can accommodate the varying symbolic expressions of experiences of conscience. Moreover, I have indeed suggested (in chapter 2) that conscience is a *human* possibility, rather than a culturally specific one, that is realized as soon as certain social conditions are met. For this reason, it also makes sense to put forward a single concept of conscience that is intended to render intelligible the experiences of conscience of people now *and* two thousand years ago. My fluid concept of conscience is intended to be able to accommodate for diversity in experiences of conscience. The ‘concerned awareness of the moral quality (etc.)’ can take on different forms in different times, but *within limits*. We are still very much able to recognize Socrates’ experience (as has been passed on to us by Plato) as an experience of conscience – despite the enormous temporal gap.

Of course, the difference between Kittsteiner’s approach and my own is partly a difference in emphasis. While Kittsteiner emphasizes difference and diversity, I try to accommodate these within a fundamental unity. It is up to the reader to decide whether this attempt has been successful or not.

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<sup>92</sup> Kittsteiner (1995), 289.

<sup>93</sup> *Ibid.*, 289-290.

<sup>94</sup> Kittsteiner also recognizes a certain unity, though; he speaks of the ‘bipolar ground-structure’ of conscience, by which he refers to the two aspects of the knowledge of a norm and the accompanying emotions (18-19, 289). Besides, if there were no more continuity than that on the level of the use of the term ‘conscience’, I doubt whether it would have made an interesting book; the interest lies in the fact that diverse conceptions of conscience are bound together by more than the use of the term.

## **Part II**



## Transition to part II: Freedom of conscience

“In various periods in European history, freedom of conscience is most fervently advocated by those to whom it is denied, for as long as this is so. As soon as freedom of conscience is granted to them, they tend to lose interest in the principle.” I could start this part on freedom of conscience with a remark like this – in fact, I have. But the point is that I could have started it with a completely different statement, with just as much (or little, depending on the reader’s preference in describing a half-truth) truth in it as this one. Every exercise in the history of ideas, whatever the particular idea it is concerned with, will lead one into more and more complex networks of meaning that are full of paradoxes, unexpected shifts, improbable interconnections and co-occurrences of contrary developments. So I am not saying that the history of ‘the idea of’ – I will have to put it like this at the moment, for want of a better term – freedom of conscience is unique in this respect. What I *can* say is that the complexity of the subject-matter is still often underestimated. Therefore, what I will try to do is point out the most important issues and emphasize a number of aspects of the phenomena joined under the heading of ‘freedom of conscience’ that have not received the attention they deserve. This is done against the background of my approach of conscience as explicated in part I, and with a view to current developments in the juridical use of the term and the theorizing in this field.

Many different meanings of ‘freedom of conscience’ can be discerned in different periods, as well as in the present. In *one* (not *the*) sixteenth and seventeenth century context ‘freedom of conscience’ was virtually equivalent to ‘freedom of religion’. But this came in different shapes and sizes. It could mean: (1) the immunity of the *forum internum*, that is, a prohibition of inquisition. A more extended version of freedom of conscience (2) allowed the domestic exercise of one’s religion. In the most lenient interpretation, freedom of conscience entailed not only (1) and (2) but also the right to public religious practice.<sup>1</sup> Besides this tripartite example of freedom of conscience as religious freedom, one could mention a more contemporary notion of freedom of conscience as the right of the individual to act according to his conscience in a societal context. This is what Niklas Luhmann calls ‘Gewissensfreiheit im landläufigen Sinne’ [‘freedom of conscience as it is commonly understood’].<sup>2</sup> He offers as an alternative the ‘Freiheit des Gewissens’ understood as a ‘Freiheit zum Tode’; central to Luhmann’s understanding of freedom of conscience is the idea that it does not *allow* people to act according to their conscience, but instead *saves* them

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<sup>1</sup> See, for example, Vermeulen (1989), 66; Mock (1983), 115-117.

<sup>2</sup> Luhmann (1965), 270.



from having to do so.<sup>3</sup> I will not go on introducing more and more different conceptions of freedom of conscience. What I wish to point out here is that all conceptions of freedom of conscience mentioned so far are political-juridical in nature (whatever their inspiration), and that they are to be distinguished from religious conceptions (whatever political and juridical influence they may exert). I believe this is the most basic distinction to make with regard to conceptions of freedom of conscience; it is closely bound up with the distinction between the public and the private, although the terms do not coincide.<sup>4</sup> These notions of a political-juridical conception of freedom of conscience and a religious one are to be taken as ideal-types, as the extremes of a spectrum somewhere in between which most conceptions of freedom of conscience can be located.<sup>5</sup> The best example of a religious conception of freedom of conscience is afforded by Martin Luther (1483-1546), who coined the German term 'Gewissensfreiheit'. For him, 'freedom of conscience' signifies the state of one's conscience being liberated by God through faith – the Christian conscience is free from the law and free from works, "nicht daß keine geschehen, sondern daß man auf keine sich verlasse".<sup>6</sup> Now, the conscience being liberated also from the law ('das Gesetz') may sound political enough, but it would be a misunderstanding to read it that way.<sup>7</sup> Luther explicitly states that Christian freedom (of

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<sup>3</sup> Luhmann's concept of 'freedom of conscience' will be explained further on in this chapter.

<sup>4</sup> The distinction I make between religious and political-juridical conceptions of freedom of conscience is not a distinction between different kinds of motivation for supporting freedom of conscience, but a distinction between different meanings of 'freedom of conscience'. Thus, it is not to be confused with the kind of distinction John Plamenatz makes when he says that "[p]eople can believe in persecution or toleration for two quite different kinds of reason: political and religious"; see Plamenatz (1963), 67 (in ch. 2: 'Liberty of Conscience'). Plamenatz goes on to distinguish a third kind of reason, which he calls 'philosophical'. He claims that philosophical arguments, which put forward liberty of conscience as a natural right, form the basis of our present understanding of liberty of conscience. (I will use the terms 'liberty of conscience' and 'freedom of conscience' interchangeably.)

<sup>5</sup> Historically, religious conceptions of freedom of conscience tend to give way to political-juridical conceptions. See Lecler (1977), 369, where he says that Bullinger (successor of Zwingli) and Theodor von Beza "waren sich mehr oder weniger klar bewußt, daß zwischen der 'Gewissensfreiheit' der ersten Reformatoren und der scheinbar identischen Maxime, die aus den religiösen Kämpfen hervorgegangen war, der ganze Unterschied zweier verschiedener Epochen lag." The first notion of freedom of conscience stressed the liberation of conscience and defended an objective divine truth; the second notion of freedom of conscience arose in the context of a plurality of sects and continuing conflict, and stressed the inviolable and sacred character of subjective convictions – to paraphrase Lecler.

<sup>6</sup> Luther (1983a), 124. ["not that none are done, but that one relies upon none"].

<sup>7</sup> Which did not prevent contemporaries of Luther to interpret it politically.

conscience) is not a political freedom: “Denn Christus hat uns nicht in politischer hinsicht frei gemacht, nicht im Blick auf den äußeren Menschen, sondern theologisch oder in geistlicher Weise”.<sup>8</sup>

The example of Martin Luther also illustrates how conceptions of freedom of conscience are connected with concepts of conscience. His concept of conscience is thoroughly religious, focusing on people’s personal relation to God. Hobbes’ (1588-1679) idea of conscience, to take another example, leads him to reject freedom of conscience in the societal state. Again, there is a clear relation between a view of conscience on the one hand, and a standpoint with regard to freedom of conscience on the other. However, it is just as true that ‘freedom of conscience’ was often, and increasingly so, a notion relatively independent of concepts of conscience. I will devote chapter 9 to this problem of the relation between notions of conscience and conceptions of freedom of conscience.

It would be a mistake to discuss the ideas of different theologians and philosophers in different periods of time on the matter of freedom of conscience and then leave it at that. The history of freedom of conscience is soaked with pragmatics, with the influence of time and circumstance. As Richard Dees has shown, it would be incorrect to say that toleration (a concept with which that of freedom of conscience is strongly linked) is simply the “rational response to the intractable conflicts that the religious wars represent”.<sup>9</sup> This is not meant to deny the influence of the enduring conflicts in the development towards the legal establishment of freedom of conscience, but to dampen the enthusiasm of those who “think that the widespread acceptance of toleration is one of the triumphs of rationality in the modern era”.<sup>10</sup> Nevertheless, this chapter is, inescapably, much concerned with intellectual history. To a certain extent I regret this and wish that I would have been more competent; competent enough, at any rate, to weave intellectual history and “actual historical situations and specific events” into one cloth.<sup>11</sup> I have occasionally tried to do so, however. I do not think that the regret should extend too far. Intellectual history is still part of history, or, better put, philosophical reflection does not occur in a spatio-temporal vacuum. It provides one possible trail to follow in an attempt to understand historical developments. The question as to the relation between ideas and the course of history remains unanswerable; or, it will always require new answers. Hegel said that Minerva’s Owl flies out at dusk. While

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<sup>8</sup> Luther (1994), 21 (Luther [1883], Vol. 40 II, 3f.) [“for Christ has not liberated us in political respect, not with a view to the outward Man, but theologically or in a spiritual way”].

<sup>9</sup> Dees (1998), 82.

<sup>10</sup> Idem.

<sup>11</sup> Oberman (1996), 17, wishes to “replace a timeless, immutable and therefore a-historical principle of rationality with actual historical situations and specific events”.

preparing this part of the book, it often seemed to me that philosophical reflection provides the justification for what has already happened. Less negatively formulated: it attempts to understand what has happened, and the articulation of this understanding often becomes a factor in the development of what it was an understanding of. The history of toleration and freedom of conscience, to conclude, even provides examples of cases in which philosophical reflection was definitely ahead of its time – the owl (by mistake, perhaps) flying out at dawn. In such a case, when the owl is spotted, philosophy becomes an active, modifying force in history.

Chapter 10, then, will deal with the relation between lofty ideals, pragmatic considerations and historical circumstances, through a discussion of the main problem inherent in the notion (and the practice) of freedom of conscience, namely the *problem of order*. Chapter 11 embodies the extremes of pragmatism and idealism. It shows how both the practice and the concept of toleration changed in the course of time; how toleration turned from a negative into a positive, phrased in terms of conscience and its freedom; and finally, how ‘freedom of conscience’ (despite its pragmatic history) became a powerful symbol. Chapter 12 discusses the twentieth-century solutions proposed to the problem of order, solutions that stem mainly from a juridical theoretical discourse. The chapter closes with some remarks on the philosophical basis underlying freedom of conscience – or, more accurately put, I will suggest an interpretation of freedom of conscience that I believe is more viable than some current interpretations of the principle, and that is in line with my own concept of conscience.

Why devote so much time to the notion of liberty of conscience and its history? Can we not, once we know what to mean by ‘conscience’, go on to discuss conscientious objection? Part of the question pertains to the whole of this book, and concerns the importance of (the study of) history. I have dealt with this question in the introduction to this book; therefore I will say only this: freedom of conscience is, historically, the mother of conscientious objection. Otherwise put: conscientious objection is the most institutionalized and therefore the most tangible embodiment of the principle of freedom of conscience in our time. The notion of freedom of conscience is not exhausted by its interpretation as conscientious objection, but the current practice of conscientious objection cannot properly be understood without some grasp of its genesis in the notion and practice of freedom of conscience. It is in the emergence of the latter notion that the basic problems adhering to conscientious objection (on the political level) stand out most distinctly.<sup>12</sup> It is because freedom of conscience is such a

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<sup>12</sup> Cf. Plamenatz (1963), 46: “[O]ne of the best – and sometimes even *the* best – method of getting a firm grip on a moral idea is by seeing how it arose and by contrasting it with the other ideas closely related to it.” I agree, which is why I also devote substantial attention to the notion of toleration.

powerful symbol in the Western world that the right of conscientious objection cannot be denied there without inconsistency.



## 9. Conscience and freedom of conscience

### 9.1. INTRODUCTION

When people speak of freedom or liberty of conscience, it is not at all self-evident what ‘conscience’ means – even less so than when they simply speak of conscience. It might be just another name for ‘freedom of religion’, or it can be used to cover the freedom of thought, of expression, and of conscience (more narrowly understood) itself.<sup>1</sup> Where freedom of conscience does indeed mean freedom of *conscience*, instead of something else, the meaning of the notion still depends on the meaning of ‘conscience’. Finally, the notion as a whole had a wholly different meaning for the Reformers than for sixteenth-, seventeenth-, and eighteenth-century philosophers. For this reason, I have included this chapter, which explores the conceptual relations between ‘conscience’ and ‘freedom of conscience’. Particular attention goes to the dynamic of these relations, insofar as this pertains to the rise of the notion of freedom of conscience.

A priori, it seems at least plausible that particular conceptions of liberty of conscience depend on particular conceptions of conscience, and I will show this to be true in some cases. It is equally true, however, that in time the notions of conscience and freedom of conscience parted company. Section 9.2 below deals with the general connections between the notions of conscience and freedom of conscience; 9.3 shows how they drifted apart.

I have not given a definition of ‘freedom of conscience’ in the transition to part II, and I will not do so here, simply because we are dealing with the genesis and history of the notions, which means that we will encounter different ‘definitions’ as we go. I will come to defining ‘freedom of conscience’ in chapter 12, when it ought to be possible to construct a definition that is both relevant in our time, and informed by history.

### 9.2. HOW CONSCIENCE AND FREEDOM OF CONSCIENCE WERE RELATED

#### 9.2.1. The role of conceptions of conscience in the genesis of notions of freedom of conscience

In part I, I have presented the history of expressions of and reflection on conscience as the manifestation of a gradual shift from a symbolic to an indicative understanding of conscience – some important qualifications notwithstanding. What I wish to claim here, with some caution, is that this shift was a necessary prerequisite for any notion of freedom of conscience to arise.

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<sup>1</sup> Cf. Plamenatz (1963), 66-67, where he appears to speak of ‘intellectual freedom’ and of ‘freedom of thought and expression’ as enveloped by ‘liberty of conscience’.

It is easy to say too much at this point; to overstate my case. Is any notion of freedom of conscience *logically* unthinkable, *completely* unthinkable, in a situation in which conscience is not yet understood indicatively in the (early) modern way? That is perhaps not true. It is extremely hard to say whether such an indicative understanding of conscience is indeed a logical presupposition of any notion of freedom of conscience, or whether it was in fact an historically contingent prerequisite. Historically, the notion crystallized as a product of the discourse of 'forcing the conscience', and to speak of conscience in that way does seem to presuppose a more or less indicative understanding of conscience, or, at minimum, that conscience is a familiar and as it were unremarkable word, rather than a more rare and mysterious symbolic expression of a particular kind of experience.<sup>2</sup> In other words: as long as 'conscience' functions as a symbolic expression, rather than (also) as an indicative term, it is highly implausible that people would come to speak of 'freedom of conscience'. It would be somewhat comparable to the notion of 'freedom of God' (if we take 'God' to be the core religious symbol) – an incomprehensible notion, unlike that of freedom of religion, which implies a certain (reflective) distance to religious experience and its expression. With the gradual conceptualization and solidification of conscience, the likelihood of the occurrence of a notion of freedom of conscience increases.

If some such development, by which conscience came to be understood indicatively, and came to solidify into a faculty each individual possesses, was a necessary prerequisite for the genesis of any notion of liberty of conscience, must we then say that, from this perspective at least, it was a positive development? Or was freedom of conscience the fortunate by-product of a negative development, or a reaction to such a development? I have made it abundantly clear, I think, that I believe something is lost in the indicative understanding of conscience – something of crucial importance. I also believe that the development 'from symbol to doctrine' was a critical factor in that process which led to the rejection of conscience by certain parties on the one hand, and a plurality of incompatible definitions on the other. But if we consider our current principle of freedom of conscience a valuable asset, does this not urge for a reevaluation of that development of which it seems to have been, in some way, a product? It certainly calls for an assessment of the connection between that development and the rise of a notion of freedom of conscience.

Where, under what circumstances, does a call for freedom of conscience arise? Surely not where freedom of conscience is a matter of course (if there is, or ever has been, such a place); nor where there is no

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<sup>2</sup> This holds especially for the 'secular' or political-juridical notion of freedom of conscience, and only to a much lesser degree for the Reformers' conception of freedom of conscience.

significant diversity of belief and practice.<sup>3</sup> Freedom of conscience is necessary and makes sense only in a situation of diversity. The principle and practice of toleration was the precursor of freedom of conscience; therefore, it is helpful to take note of what Catriona McKinnon calls the ‘circumstances of toleration’.<sup>4</sup> They are fourfold: 1) “*Difference*: what is tolerated differs from the tolerator’s conception of what should be done, valued, or believed.”; 2) “*Importance*: what is tolerated by the tolerator is not trivial to her.”; 3) “*Opposition*: the tolerator disapproves of and/or dislikes what she tolerates, and is *ipso facto* disposed to act so as to alter or suppress what she opposes.”; 4) “*Power*: the tolerator believes herself to have the power to alter or suppress what is tolerated.”<sup>5</sup> McKinnon distinguishes two other ‘structural features of toleration’: 5) “*Non-rejection*: the tolerator does not exercise this power.”; 6) “*Requirement*: toleration is right and/or expedient, and the tolerator is virtuous, and/or just, and/or prudent.”<sup>6</sup>

What role did (conceptions of) conscience play in (the coming about of) the circumstances of toleration and, in its wake, freedom of conscience? What is a matter of conscience to people is a matter of ultimate concern; clearly, then, it is a matter of importance. The processes of doctrinalization that took place during the Middle Ages and in early modern times entailed that people absolutized the ‘contents’ of their consciences. They came to insist on the literal truth of what was merely an imperfect symbolization of the ultimate. This attitude, which was one product of the transition to an indicative understanding of conscience, implied that other beliefs were seen as ‘deviant’, and that ‘deviant’ beliefs were opposed. It was a matter of importance to people that other people should hold the same beliefs, and if they did not, the former opposed (the beliefs of) the latter. The reality of conscience, then, shaped by a misunderstanding of the original nature of conscience, played an important role in bringing about the circumstances of toleration; more specifically, in bringing about the unfreedom that was the opposite of freedom of conscience. That the circumstances of toleration are there does not make the practice of toleration a given. The doctrinal understanding of conscience in itself constituted a force against toleration; but paradoxically, by doing so, and due to the importance attached to conscience, it became a factor in the genesis of freedom of conscience, both in theory and in practice. Theologians tended to defend conscience; ‘secular’ (excuse the anachronism) philosophers were the strongest advocates of

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<sup>3</sup> We might see that the notion arises only where, in practice, it is not there *and* this absence is no longer self-evident – it is now experienced as an absence.

<sup>4</sup> Chapter 11 deals with the difference and the relations between the principles of toleration and freedom of conscience in more detail.

<sup>5</sup> McKinnon (2006), 14. I am not sure whether ‘difference’ still needs to be mentioned if ‘opposition’ already figures in the list. The latter seems to incorporate the former.

<sup>6</sup> *Idem*.



freedom of conscience as a natural right.<sup>7</sup> But the support that the latter notion received depended in part on the sanctity of conscience in traditional views, and on the importance of conscience for influential religious minorities. Finally, conscience could play a role insofar as toleration and freedom of conscience were advocated on moral grounds; not merely because it was prudent, but because it was right and just.

**9.2.2. A double inversion of meaning**

I have emphasized the historical shift from a symbolic to an indicative understanding of conscience. From a more strictly conceptual point of view, however, there are still many ways to describe the transformation of conceptions (to speak of *concepts* of conscience in pre-scholastic times would be an overstatement) of conscience that took place during the Middle Ages and in early modern times. One way of looking at it is presented in the following figure:

<i>'syneidesis'</i> <i>'conscientia'</i> <i>early use of 'conscience'</i>	<i>later use of 'conscience'</i>
<b>concrete:</b> 'knowing-with (others)' of a concrete act	<b>abstract:</b> conscience as 'moral sense'; moral consciousness in general; not attached to a concrete act
<b>abstract:</b> 'conscientia', like 'scientia' is something in which one can participate; something that admits of degrees	<b>concrete:</b> private conscience: "my conscience", "your conscience", conscience as a 'thing'

**Figure 1: inversion of meaning in use of the term 'conscience' and its predecessors**

This figure shows how conceptions of conscience turned upside down, as it were, with regard to their abstractness and concreteness. 'Conscience' literally refers to a form of knowing, a 'knowing-with' (someone). In the case of 'syneidesis', 'conscientia' in its early use, and even 'conscience' in its early use, this 'knowing-with' entails knowledge of a concrete act; in this sense they are *concrete* notions. On this (epistemological) level, the (early) modern notion of conscience is *abstract*. 'Conscience' does not so much stand for concrete knowledge concerning a concrete act, but rather for a moral faculty or a moral sense; a general power rather than an awareness tied to a concrete act. Older notions of conscience are also, in another sense, *abstract*. They

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<sup>7</sup> Cf. Plamenatz, 77-88.

referred to something (i.e. knowledge) one participated in, more or less in a Platonic sense. In this respect – we might say: from the point of view of the ‘solidity’ of conscience – the (early) modern notion of conscience is *concrete*: it is not knowledge one participates in, but knowledge one *has*. From the late Middle Ages on, people start speaking of ‘my conscience’ and ‘your conscience’. Every individual person comes to possess his or her own conscience.<sup>8</sup>

The point of introducing this rather general (and inescapably simplified) scheme of the development of conceptions of conscience is that this double inversion, by which conscience became abstract in that respect in which it had been concrete and concrete in that respect in which it had been abstract, has been crucial for the development of both religious and political-judicial notions of ‘freedom of conscience’. This should not be taken to mean that the inversion had to occur *first, before* any idea of freedom of conscience could arise. The inversion is indicative of a process which also gave rise to the different notions of freedom of conscience. Negatively put: freedom of conscience is conceptually unthinkable when conscience is thought of as something abstract one can participate in, and as something tied to a concrete act.<sup>9</sup> Conscience, as it is understood in any interpretation of ‘freedom of conscience’, is something quite general, possessed by every individual. One has to ‘possess’ a conscience before it can be coerced; one has to have a conscience for one’s conscience to be able to be free. Both sides of the double inversion of meaning tend towards such a solidification of conscience into each individual’s private and sacred possession. Thus, we see once again that earlier conceptions of conscience were closer to the symbolic understanding of conscience than later indicative use.

### 9.3. WHERE CONSCIENCE AND FREEDOM OF CONSCIENCE PART

In the previous subsection, I attended to a very general link between *any* interpretation of freedom of conscience and (early) modern concepts of conscience. In the transition to part II, I pointed out that particular notions of or attitudes towards freedom of conscience and particular concept(ion)s of conscience are often closely linked. Hobbes is a case in point.<sup>10</sup> Luther is

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<sup>8</sup> This double inversion of meaning can be distilled from the history of expressions of and thought on conscience as I have presented it, but also from the available literature on conscience and its conceptual predecessors. Lewis (1991) is particularly helpful.

<sup>9</sup> There have been individualizing tendencies in Greek Antiquity, and especially in the New Testament use of ‘*synecidesis*’; these will be discussed in chapter 10.

<sup>10</sup> Although there is an ambiguity in his remarks on conscience, as I have shown in chapter 4, it is safe to say that his prevailing view of conscience was that it was nothing more than “a man’s settled judgement and opinion”, which led him to

another example. But more interesting than this rather unsurprising fact that interpretations of and attitudes towards freedom of conscience are often linked to a particular definition of conscience is the fact that conscience and freedom of conscience also tend to part, conceptually. This is more so with some authors than with others, and more often the case with later authors than with earlier ones. Before I move to illustrations of conscience and freedom of conscience diverging conceptually, however, I will say something about the relation between the two in Calvin's thought. This example is particularly interesting, because in Calvin's thought conscience and freedom of conscience appear, at first sight, to diverge, which on closer inspection they do not, and secondly, because the third element of what Calvin calls 'Christian freedom' does contain the germ of divergence.

John Calvin (1509-1564) never systematically developed a concept of conscience, but he said quite a lot about it, covering many aspects of the phenomenon. As David Bosco demonstrates, Calvin uses judicial metaphors to draw attention to the cognitive aspect of conscience and metaphors of violence when addressing the emotive element.<sup>11</sup> Conscience is what brings us before God's throne, and is thus related to judgement, but it is also described as a worm, harassing the sinner. In one place, it is defined by Calvin as follows:

“[J]ust as through the mind and understanding men grasp a knowledge of things, and from this are said ‘to know’, this is the source of the word ‘knowledge’, so also when they have a sense of divine judgment, as a witness joined to them, which does not allow them to hide their sins from being accused before the Judge’s tribunal, this sense is called ‘conscience.’ For it is a certain mean between God and man, because it does not allow man to suppress within himself what he knows, but pursues him to the point of convicting him.”<sup>12</sup>

The emphasis in this definition lies on the ‘being-judged-upon’. One thing that is interesting about this definition is that it distinguishes between conscience as ‘a sense of divine judgment’, as a concrete awareness at a particular moment in time, and conscience as a more general term, analogous to ‘knowledge’. I would say that the idea of conscience as a ‘moral sense’ or as a power, or a faculty of judgement, derives from the experience of a certain stability in experiences of conscience. It is because the same person tends to react to similar situations in a similar way, because every time he

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dismiss the idea that people living in society ought to be allowed to follow their own conscience. The same ambiguity can be found in Locke's thought.

<sup>11</sup> Bosco (1986).

<sup>12</sup> John Calvin, *Institutes of the Christian Religion*, John T. McNeill (ed.), Ford Lewis Battles (transl.), The Westminster Press, Philadelphia, 1960, III.19.15, quoted in: Bosco (1986), 336-337.

does something ‘wrong’, a certain kind of awareness arises in him of the quality of this act of his, that people have come to think of conscience (as of consciousness in general) as an enduring, stable presence.<sup>13</sup> This is what we noted above, in slightly different terms, as a necessary requirement for people to be able to think of freedom of conscience.

According to Lecler, for Calvin, freedom of conscience meant the freedom to decide in ‘indifferent things’.<sup>14</sup> These ‘adiaphora’, as they were called, were things, certain church rites for instance, that were not regarded as essential to faith, as they were neither forbidden nor commanded by God.<sup>15</sup> According to Lecler, freedom of conscience, in Calvin’s interpretation, is a *freedom to decide* in certain matters, a freedom to judge for oneself. If this were true, more precisely: if this were the whole truth, conscience and freedom of conscience would diverge here. Calvin’s notion of freedom of conscience would link up with only one aspect of his conception of conscience, and in such a way that the subtlety of his definition of conscience quoted above would be lost. It is true that Calvin also speaks of conscience as the “innate power to judge between good and evil”, but a closer inspection of the many places where Calvin links conscience and judgement reveals that “[c]onscience derives its authority not from being the judge, but from being the convener of the court of the Judge for each person. It functions as the delivery service for judgment.”<sup>16</sup> But like I said, this subtlety would be lost in Calvin’s interpretation of freedom of conscience, *if* Lecler gave us the whole truth about Calvin’s interpretation of this notion.

In fact, he did not. Calvin’s interpretation of freedom of conscience is a good example of an interpretation that is closely related to a particular conception of conscience. He says:

“Christian freedom, in my opinion, consists of three parts. The first: that the consciences of believers, in seeking assurance of their justification before God, should rise above and advance beyond the law, forgetting all law righteousness. (...) The second part, dependent on the first, is that

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<sup>13</sup> See chapter 8.

<sup>14</sup> Lecler (1977), 352.

<sup>15</sup> Adiaphora, ‘indifferent things’ were matters of conscience for some, but not for others – they were of concern to some, and indifferent to others. One wonders whether in the long run the case of those desiring freedom of conscience is helped by recognition of it with regard to ‘indifferent things’. They are things that one regards as of ultimate importance, but that others regard as indifferent, without significance. This means that the freedom of conscience that is granted has its base in a complete lack of understanding. It seems to me that a more meaningful freedom of conscience would be one that is granted to you by others on the basis of a recognition by those others of the importance that certain matters have to you.

<sup>16</sup> Bosco (1986), 335-336.

consciences observe the law, not as if constrained by the necessity of the law, but that freed from the law's yoke they willingly obey God's will. (...) The third part of Christian freedom lies in this: regarding outward things that are themselves 'indifferent', we are not bound before God by any religious obligation preventing us from sometimes using them and other times not using them, indifferently."<sup>17</sup>

The first part of Christian freedom relates more to what Bosco called the cognitive element of conscience, the element of justification before God, of divine judgement. The second and third parts of Christian freedom are more concerned with the emotive aspect of conscience. These parts of freedom of conscience entail the conscience being relieved from excessive worry, that is only a hindrance in ('joyous') obedience to God.<sup>18</sup> So, different aspects of Calvin's conception of conscience are reflected in different parts of Christian freedom.

In the third part of this freedom, however, lies the beginning of a separate career for the notion of freedom of conscience. Later discussions of freedom of conscience often centered round the problem of 'adiaphora'. John Locke, for instance, (who was a latitudinarian), took up the matter of 'adiaphora' in his *Two Tracts on Government* (1660) to demonstrate the authority of the civil government in religious matters.<sup>19</sup> Freedom of conscience comes to mean: the freedom to act according to one's conscience in religious matters.<sup>20</sup> When Hobbes stated "that no human law is intended to oblige the conscience of a man, but the actions only", he meant "to take away this scruple of conscience concerning obedience to human laws, amongst those that interpret to themselves the word of God in the Holy Scriptures", those being the people "continually demanding liberty of conscience".<sup>21</sup> In Hobbes' view, freedom of conscience could not be a problem, because conscience had to do with one's inner life, not with outward actions. In fact, in his idea of freedom of conscience, he follows Luther's line of thought. In Hobbes' use of the term, conscience has nothing to do with outward actions, and freedom of conscience can therefore hardly

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<sup>17</sup> Calvin (1961), III.19.2, III.19.4 and III.19.7.

<sup>18</sup> All three elements can also be found in Luther's works, though not enumerated as clearly as in Calvin's *Institutes*. This goes for the third part of Christian freedom as well, which I did not mention earlier: "In den Dingen aber ist er [der Mensch] frei, die Gott nicht geboten hat, wie z. B. in äußerlichen Werken." Luther (1994), 21 (Luther [1883], Vol. 42, 512).

<sup>19</sup> Creppell (1996). Latitudinarians held that only a small number of basic beliefs were essential to faith, and that all the rest (other beliefs, rituals, ceremonies) was a matter of personal choice, irrelevant to salvation.

<sup>20</sup> Many varieties were possible: it could be a freedom for the individual, or for religious groups; it could vary in degree of publicity.

<sup>21</sup> Hobbes (1969), 145 (II.6.2/3).

be a problem. The way the term is used by those claiming freedom of conscience for themselves, referring to a certain kind of freedom of action, renders the term meaningless – that, at least, is Hobbes' view. But Hobbes pictures conscience as a separate entity, demanding satisfaction. He pretends that it is isolated in its own internal sphere, whereas in fact it concerns (among other things) one's own *actions*. Conscience is by definition not confined to one's inner life. The separation between 'inner' and 'outer' Hobbes makes is artificial, and rests on a misunderstanding of conscience.

Hobbes points out (not entirely correctly) that the problem of whether to follow God's commands or those of man is not "of very great antiquity in the world".<sup>22</sup> It was not a problem for the Jews, because their civil law and their divine law were both the law of Moses; it was not a problem in Antiquity, because then both 'righteousness and virtue' and religious matters were ordered by civil law. The point of interest for us is that it becomes clear that freedom of conscience becomes a problem only when religion and the state *are already separated* to a certain degree. It is not simply the case, as one may be led to believe by reading the literature on the subject, that the separation of church and state was the next step, *after* the conception of the idea of freedom of conscience, in attaining freedom of conscience. The idea of freedom of conscience, in the guise of freedom of religion, arose when church and state were already drifting apart.<sup>23</sup>

Returning to the subject of this section: conscience and freedom of conscience parted conceptually when freedom of conscience came to be understood almost exclusively as freedom of religion, where this, moreover, was taken to be a certain kind of freedom of *action*. When freedom of conscience acquires such a meaning, or this becomes its dominant meaning, only certain specific aspects of conscience retain their relevance in this general context.<sup>24</sup> Which aspects these are depends on the more specific context. Freedom of conscience can be requested for the purpose of relieving someone's private suffering. This occurs when someone asks to be exempted from obedience in a case where this would cause great guilt, remorse et cetera. This is the kind of freedom of conscience Luhmann is most interested in, as we shall see. The elements of ultimate concern and intimacy expressed in the symbol of conscience are uppermost here. In another context, a demand for freedom of conscience may entail a demand to decide for oneself in certain (religious) matters. Here, the element of intimacy might be most prominent, or that of ultimate concern in the form of inspiration.

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<sup>22</sup> Ibid., 145 (II.6.2).

<sup>23</sup> See chapters 10 and 11.

<sup>24</sup> This is not surprising, because in 'freedom of conscience' it is *freedom* that is the dominant element; conscience recedes in the background.

The 'conscience' in 'freedom of conscience', we can say in conclusion, loses the richness of the symbol of conscience and detaches itself from concepts of conscience when 'freedom of conscience' itself gains in significance. That the notion of freedom of conscience gained a relative independence from concepts of conscience, requiring the support of only some aspects of conscience, is only one half of the story, however. It is just as true that concepts of conscience were modified under the influence of the notion of freedom of conscience, with its increasingly impressive political and juridical career. This influence, which to a certain extent brought conscience and freedom of conscience back together again, lay mainly in a formalization of concepts of conscience. Yet, on the other hand, a certain degree of formalism was necessary for any notion of freedom of conscience to arise in the first place. I will return to this in chapters 10 and 12.

## 10. The problem of order

“The great writers to whom the world owes what religious liberty it possesses, have mostly asserted freedom of conscience as an indefeasible right, and denied absolutely that a human being is accountable to others for his religious belief. Yet so natural to mankind is intolerance in whatever they really care about, that religious freedom has hardly anywhere been practically realized, except where religious indifference, which dislikes to have its peace disturbed by theological quarrels, has added its weight to the scale.”

JOHN STUART MILL, *On Liberty* (1859), introduction.

### 10.1. INTRODUCTION

This chapter deals with the core problem attached to the concept and the practice of freedom of conscience. It is what I will call *the problem of order*. It has two dimensions: 1) political order, and 2) order in the minds of men. The notion of freedom of conscience has a problematic relationship to both kinds of order. The nature of this relationship, and of the relation between the two dimensions, varies in time and depends on the perspective taken. For religious parties in the sixteenth and seventeenth century, to allow people to practice religion according to their own conscience was the same as allowing the minds of men to become disordered, and their souls to be lost. Order in the minds of men was a separate concern for them, apart from a concern for political order, even if both could be related in a number of ways. From the perspective of early-modern states, and in seventeenth-century philosophy, the second dimension of the problem of order is only a problem because of its relation to the first dimension. Political order is endangered by disorder in people’s minds. The second dimension of the problem of order can also be phrased as the problem of subjectivity: is it sustainable for a state to allow freedom of conscience, if conscience is purely subjective? It is the danger of subjectivity that, in Hobbes’ view, necessitates the repression of conscience in the political sphere. With Locke, the emphasis moves in the direction of education as a solution to the problem of subjectivity.

The problem of order arose when the medieval unity of faith could no longer be sustained, even by force. The organization of society had been bound up with the unity of the church. In the later Middle Ages, when church and state were in some respects already beginning to disentangle, worldly rulers and ecclesiastical rulers nevertheless found each other as ‘supporters of the hierarchical principle’.<sup>1</sup> Even though, as Southern writes, “papal government (...) had lost most of its teeth”, “the ecclesiastical

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<sup>1</sup> Southern (1990), 52.



hierarchy could not be seriously attacked without a threat to the whole social order".<sup>2</sup> Hence, when an ineradicable plurality of faith had come into being, this presented the state with an enormous problem. This problem was exacerbated by the fact that both parties claimed to constitute the true church, and therefore laid claim to the state's allegiance. Political order was also endangered by the conflict between the (initially) two parties itself. Two general solutions offered themselves at first, depending on which dimension of the problem of order was taken as the point of departure. Departing from the first dimension, one could decide to repress conscience; departing from the second, one could attempt to discipline and educate conscience, with a view to attaining political stability.<sup>3</sup> Only for religious parties was the problem of subjectivity a problem in its own right, and was the disordered mind a concern in itself. For the state, the problem of subjectivity was always only a problem because of its effect on political order; moreover, whereas at first a relation may have been perceived between the 'right' order in people's minds and political stability, the problem of subjectivity soon turned into a coordination problem: as long as all subjects adhered to the same faith, there was no threat to political order. Later, this idea gave way to the idea that political order was best served by separating it from 'order in the minds of men', from religion and conscience, altogether. In other words: the solution known as the separation of church and state presented itself. As we have seen in part I, the education of conscience was also engaged in; thus, the problem was attacked on both fronts.

The religious concern for people's souls; that is, their concern with the problem of subjectivity as a problem in its own right, gradually diminished. The two dimensions of the problem of order merged into one. When this happened, separate solutions to the problem of subjectivity were no longer sought. As we will see in chapter 12, twentieth century solutions to the problem of order are meant to be solutions to the problem of order in its first dimension alone.<sup>4</sup> The same problematic that haunts the principle of freedom of conscience clings to the theory and practice of conscientious objection, which, where legal provisions have been made for it, is the most conspicuous modern embodiment of the principle of freedom of conscience. In fact, institutionalization of conscientious objection is itself a way of dealing with the problem of order, by keeping it within controlled bounds. It

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<sup>2</sup> *Ibid.*, 50.

<sup>3</sup> In the early-modern context, 'conscience' is a broad notion; freedom of conscience and freedom of religion were intertwined. To 'repress conscience' can mean anything from repressing actions according to conscience to inquisition and indoctrination.

<sup>4</sup> Although in Luhmann's case another variant of the problem of subjectivity can be seen to arise.

is because the problematic of conscientious objection is *au fond* that of freedom of conscience that this part of the book is so important.

I hope to show that history, apart from pushing in the direction of these problems, has also brought to the surface some ways of dealing with them. The solutions suggested in the twentieth century are the conclusions drawn from centuries of historical development. The rise and development of concepts of freedom of conscience has a curious dynamic. The rise of a situation of enduring religious plurality weakened the basis for claims to objectivity; it brought with it the existence of separate inter-subjective truths. This necessitated a more formal approach to conscience. Once conscience is conceptualized in a formalistic manner, the problem of subjectivity steps into the theoretical foreground – a problem that undermines the concept of freedom of conscience. Both subjectivity and formalism are prerequisite for the rise of the ‘secular’ notion of freedom of conscience; at the same time, they undermine it. This shows ‘freedom of conscience’ to be a tensional concept. While it has been recognized as a good, it has always been feared that an evil lurks behind it. To allow freedom of conscience is to relinquish control in a certain area; the challenge has been to do so in a controlled manner.

Through the present part of the book we make the transition from conscience to the practice of conscientious objection, and with that the emphasis shifts from the experienced reality of the individual to social and political reality. For this reason, I deal with conceptions of freedom of conscience primarily from a conceptual point of view; as part of a certain political philosophical discourse, ‘freedom of conscience’ is first of all a concept. Nevertheless, there is a symbolic aspect to the notion too, and the concept of freedom of conscience does lean on that, and does to a certain extent depend on it for its support. As a symbol, then, ‘freedom of conscience’ is also an important part of political reality, which is why 11.3 deals with the question how ‘freedom of conscience’ became a powerful symbol. Until that chapter, it is important to bear in mind that there is this symbolic aspect to the notion of freedom of conscience.

I will start by showing that and how the notion of freedom of conscience was bound up with the problem of how to sustain social, and especially political, order. 10.3 discusses the second dimension of the problem of order: the problem of subjectivity. It shows that the very same subjectivity that (theoretically, at least) undermined the notion of freedom of conscience, helped give rise to it. 10.4 provides some concluding remarks.

## 10.2. THE FIRST DIMENSION: POLITICAL ORDER

The macro-dimension, we might say, of the problem of order is that of political order. By ‘political’ I mean the social as seen from the aspect of questions of power and the ordering of power-relations: how is the tensional

living-together of people in a limited geographic area structured, so as to allow this living-together to sustain itself? The political is that aspect of the social about which we speak in terms of power, conflict, (dis)order, (in)stability, interests, and so on.<sup>5</sup> We will see that such terms pervade this section. Now that this problem of definition is out of the way, let us see how freedom of conscience relates to this dimension of the problem of order.

In his essay on freedom of conscience, Montaigne (1533-1592) says:

“[E]n quoy cela est digne de consideration, que l’Empereur Julian se sert, pour attiser le trouble de la dissention civile, de cette mesme recepte de liberté de conscience que nos Roys viennent d’employer pour l’estaindre.”<sup>6</sup>

Freedom of conscience can be used as a recipe for both order and disorder, depending on the situation. Montaigne mentions two possible situations: one in which freedom of conscience is allowed with the purpose of heightening disorder, and one in which it is used to create order. Another possible position is taken by Hobbes and the early Locke, who *dismiss* freedom of conscience for the sake of stability and order.<sup>7</sup> Though I cannot think of a concrete example at the moment, I do not doubt that there has been someone in some situation who opposed freedom of conscience because he desired disorder – which is the fourth possible combination.

In Montaigne’s days, kings made use of freedom of conscience to fight disorder. Not much later, Hobbes defends the opposite view that freedom of conscience must *not* be allowed if one desires order. So, both these views were held in more or less the same period. Baruch de Spinoza (1632-1677) gave his *Tractatus Theologico-Politicus* the subtitle “containing a number of dissertations, wherein it is shown that freedom to philosophise can not only be granted without injury to Piety and the Peace of the Commonwealth, but that the Peace of the Commonwealth and Piety are endangered by the suppression of this freedom”. In the final chapters of this work, Spinoza explains that “it is impossible to deprive men of the freedom to say what they think”, and that “this freedom can be granted to everyone without infringing the right and authority of the sovereign” – a right and

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<sup>5</sup> Cf. Wolin (2004), chapter 1. For Eric Voegelin, ‘representation’ would be a key term as well, referring not merely to the representation of the ruled by the ruler(s), but also to the political order as a representation of cosmic order.

<sup>6</sup> Montaigne (1962), 654 (Essays, Book II, Chapter 19). [“Wherein this is very worthy of consideration, that the Emperor Julian made use of the same receipt of liberty of conscience to inflame the civil dissensions that our kings do to extinguish them.” Translation from Michel de Montaigne (1877).

<sup>7</sup> I should note that Hobbes did argue that, where toleration would seem to be more conducive to social peace than enforced uniformity, he advocated the former; he also rejected laws against heresy. See: Hobbes (2000), introduction: xl-xli.

authority that pertain also to religious matters.<sup>8</sup> In the first half of the fourteenth century, Marsiglio of Padua already held the view that religious diversity should be tolerated (within limits), and he defended this on ‘communal functionalist’ grounds – that is, on the basis of an argument concerning the proper functioning of the community as a whole, consisting of interdependent parts.<sup>9</sup> I present these examples here to illustrate the fact that the issue of freedom of conscience (or earlier: that of toleration) is bound up with the problem of political order. The argument from the importance of order and stability is a stable element in discussions concerning toleration or freedom of conscience from the late Middle Ages up to the seventeenth century. Yet in this period an important transition took place. The position that *defended* freedom of conscience on the ground that this would be beneficial for the stability of society would become the dominant position in time, for an important part with the aid of an economic argument. I will point out some key moments in the transition, starting with the importance of the Reformation.

It is regularly claimed, in varying terms, that the Reformation ‘caused’ the breakdown of the supposed ‘medieval unity of faith’.<sup>10</sup> Michael Baylor states: “In Luther’s theology is seen a principle of freedom which (...) shattered the unity of the medieval church...”<sup>11</sup> B.P. Vermeulen, to take another example, writes of the ‘diversity of faith’ ‘brought about by’ or ‘caused by’ the Reformation.<sup>12</sup> These are rather unfortunate phrasings, suggesting too simple an idea of causation. The Reformation did not *cause*, but *was* the breaking up of the old unity – even if Reformers never intended it to be that. By the time of the waning of the Middle Ages, the medieval unity of faith, in so far as it existed, had increasingly to be upheld by force. But this was a process that took place from the earliest beginnings of Christianity. Countless sects were condemned as heresies and persecuted.<sup>13</sup> The Reformation can legitimately be described as a breakthrough, but it did not turn up out of the blue; the possibility of religious diversity, and of toleration of religious diversity, had already been suggested by Marsiglio of Padua (1270-1342), for example.<sup>14</sup>

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<sup>8</sup> Spinoza (1989), 47 and chapters 19 and 20.

<sup>9</sup> Nederman (1994).

<sup>10</sup> I say ‘supposed’, because much of it was only appearance. Since 1054, for example, there were two churches: the Catholic church and the Greek Orthodox church of the Byzantine empire. See: Zagorin (2003), 46.

<sup>11</sup> Baylor (1977), 4.

<sup>12</sup> Vermeulen (1989), 42 and 45.

<sup>13</sup> See, for example, Zagorin (2003), chapter 2: “The Christian Theory of Persecution”, and Guggisberg (1984), chapter 1: “Frühes Christentum, Mittelalter, christlicher Humanismus”.

<sup>14</sup> Webb (1984), 100.

As to the matter of the unity of faith being upheld by force, it must be said that it was not just church authorities that used force. There is ample evidence that heretics were also confronted by popular violence. R.W. Southern states that “on the whole the holders of ecclesiastical authority were less prone to violence, even against unbelievers, than the people whom they ruled.”<sup>15</sup> Bernard Hamilton claims that heretics “aroused intense feelings of fear among the mass of the people” and that the Inquisition “substituted the rule of law for mob violence in the persecution of heresy”.<sup>16</sup> It must also be taken into account that heresy was not exclusively a religious phenomenon. A heretic was not necessarily someone with a different opinion as to the interpretation of Bible-passages, or with a different view on the role of the church – heretics often reacted to the concrete social situation they found themselves in, signalling what they judged were social ills, as Austin P. Evans says.<sup>17</sup> He quotes Guiraud: “Heresy in the Middle Ages nearly always connected itself with some anti-social system. In a period when the human mind habitually expressed itself in theological form, socialism, communism, and anarchy appeared under the forms of heresy.”<sup>18</sup> The charge of heresy occurred, sometimes at least, in certain towns’ struggle for urban freedom, and in conflicts concerning economic issues.<sup>19</sup>

Any society is ordered in multiple ways; that is, there are many aspects to any societal order: political, economic, religious, military,

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<sup>15</sup> R.W. Southern, *Western Society and the Church in the Middle Ages*, Penguin Books, Harmondsworth, 1970, 19, quoted in Moore (1984), 43.

<sup>16</sup> Bernard Hamilton, *The Medieval Inquisition*, London, 1981, 25 and 57, quoted in: Moore (1984), 43.

<sup>17</sup> Evans (1931), 93.

<sup>18</sup> J. Guiraud, *Questions d'histoire et d'archéologie chrétienne*, Paris, 1906, 44, in: Evans (1931), 93 (translation by Evans).

<sup>19</sup> Evans (1931), 115-116. Luther's opposition to the Catholic Church also had an important economic element in it: on religious grounds, he criticized the system of *indulgences*. An indulgence was money payed by a sinner to buy off some of (in the case of a rich man perhaps even all of) his time in purgatory. This ‘system of high spiritual finance’, as Erikson calls it, became increasingly perverse (Erikson [1958], 220). The money collected by special friars was used to finance the building of St. Peter's Church in Rome, or to pay for the personal debts of bishops. Luther's criticism was especially directed against the Dominican monk Tetzl, who even went so far as to sell indulgences for sins not yet committed, but only contemplated. Tetzl also advised people to go to the confessor of their choice, so that they could avoid the less lenient. (Ibid., 220-221; for Luther's views on indulgences see also Wicks [1967]; with respect to Tetzl especially 482.) Luther's criticism of such practices was a threat to the church, not just for religious reasons, but also because it was directed at what had become an important part of the economy the church relied upon. (Protests against the materialistic orientation of the church were not new. In several countries, monasteries became the victim of public rage, caused by the exorbitant accumulation of wealth in these ‘spiritual’ institutions.)

psychological, and so on. These are abstractions, of course. In reality they are interwoven – and yet they seem to individuate themselves to such an extent that we are forced to recognize them as relatively independent.<sup>20</sup> Any society has multiple aspects in this sense, but at the same time its particular order is characterized by the pattern they make, in which some aspects or dimensions of order are dominant over the others. In this sense, it is surely true that the medieval societal order was a thoroughly *religious* order, both on a popular level and on the level of worldly and spiritual authorities. Religion put its stamp on all other aspects of society, in a way that it could not be said the economy or the political aspect of order did. Given the dominance of the religious dimension of medieval society, the Reformation, which confronted both worldly and spiritual authorities with the reality of a religious plurality that could no longer – although they tried for some time – be repressed, presented a huge problem. If the unity of faith is the unity of state and society, then what will happen to the latter when an uncontrollable diversity of faith comes into existence?

It took a long time before people could see the possibility of a stable society and a powerful state without a unity of faith. The rise of the nation-state and of free cities enabled (if not necessitated) another solution: *cuius regio eius religio*; the religion of the ruler would be that of the ruled.<sup>21</sup> Different territorial regions would have different religions, but in each region only one religion would be allowed. It was a compromise between Lutherans and Catholics; the former had managed to create a space within the Holy Roman Empire in which they were safe from persecution, protected by a worldly ruler.<sup>22</sup> But it is important to see that this had nothing to do with religious toleration, except in the sense that each party had to tolerate that the other's faith was dominant in other states. So this was just as much about the sovereignty of states as it was about religion. People had to accept that what religion was officially adhered to in another state was not their business, so to speak. The Peace of Augsburg also represented an important stage in the dynamic of church-state relationships. Formally, at least, the worldly ruler decided which religion his people were to have. Theoretically, then, the state gained predominance over religion. But it was religious pressure that brought

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<sup>20</sup> As I take it, the term 'aspect' belongs neither to the fully subjective, nor to the purely objective side of experience. On the one hand, an aspect of something is that 'thing' looked at from a certain angle; on the other hand, aspects force itself upon our experience, as it were – perhaps because of the way we are, but that does not detract from the fact that the notion of aspects defies arbitrariness. Aspects are relational 'entities'. I will also speak of 'dimensions' of societal order, to emphasize the more objective element of 'aspects' of order.

<sup>21</sup> The principle (which was by no means new) was laid down in the treaty of the Peace of Augsburg (1555). Under the treaty people were allowed, within a certain period of time, to move freely to a region of their own religion.

<sup>22</sup> This was not the case for other varieties of Protestantism.

this situation about. Early modern states were closely linked to specific religious denominations. Even though, in retrospect, we can see that a separation of interests had long been under way, “early modern European states were financially, administratively and militarily not strong enough to sustain themselves without the aura of religious, dynastic and juridical symbols”.<sup>23</sup>

For Luther and Calvin the connection between church and state was still a matter of course. I have said before that Luther explicitly distinguishes between the spiritual and the worldly realm, between a religious freedom of conscience and a political interpretation of the principle. Both Luther and Calvin emphasized the necessity and importance of obedience to the worldly government. In Book IV, Chapter 20 of his *Institutes*, Calvin makes it clear that even tyrants must be obeyed. Ordinary people would be presumptuous if they thought they had the ability to judge the ruler, and the right to overthrow the government. The office of the king is divinely instituted, and therefore the king can only be set aside by those near to him in office.<sup>24</sup> It is nevertheless significant that Calvin allows for this possibility. It shows up a difference between his thought and Luther’s. While Luther merely wanted the state to secure the possibility of religious life; that is, while he “wanted worldly discipline for the sake of spiritual freedom”, Calvin in fact desired to subordinate the state to the church. He declared their independence from each other, yet wished to “ensure that the State shall support *the* true Church”.<sup>25</sup> Which part of his thought he emphasized depended on the situation. Where the (true) church was dominant over the state, he preached obedience; where the true faith was suppressed, he stressed the right of resistance.<sup>26</sup> Plamenatz shows that Calvin still relies on medieval theories of resistance and the relation between church and state. Stuurman makes the same point and writes: “A continuous thread runs from medieval political theory to early modern critics of absolutism. Contrary to a persistent historical myth Lutherans and Calvinists did not put forward a *new* theory of resistance.”<sup>27</sup> But while Calvin may have advocated a right of resistance, and while both Luther and Calvin held that God was to be obeyed before men, the model of the state they envisaged was fairly absolutist. No less than Hobbes in the seventeenth century did they emphasize the basic need for order. Calvin also insisted that the state should support the ‘true’ faith. In

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<sup>23</sup> Stuurman (1995), 49 (my translation).

<sup>24</sup> Calvin (1961), IV.20.

<sup>25</sup> Plamenatz (1963), 57-58.

<sup>26</sup> *Ibid.*, 59.

<sup>27</sup> Stuurman (1995), 99.

this respect, he was as absolutist in his thought as Hobbes, and perhaps more so.<sup>28</sup>

Koselleck points out how absolutism had its background in the religious wars of the sixteenth and seventeenth centuries, and how absolutism in turn formed the background for the Enlightenment, at the heart of which lay the growing into independence of the moral realm (in separation from the political), from which absolutism could be criticized. The secret space in which the moral realm could develop came into existence when Hobbes separated 'inner' and 'outer', private and public. The sovereign controlled the latter sphere, but not the inner conscience. He took all political responsibility away from the people, so that he had sovereign power and full responsibility. He could not share political power with others, for in that case he could not hold up his end of the bargain, the social contract. Only if he alone had political power, could he have full political responsibility. The citizen, politically powerless and bare of responsibility, Koselleck maintains, discovered himself as *moral*. He claims that in Locke's thought, we see how morality becomes *social*, rather than private, and that moral judgement is extended to the value of actions. A separation of the moral and the political is underway; society separates itself from the state and gradually comes to oppose it. For Turgot (1727-1781), Koselleck writes, "[d]as Gewissen dem politischen Gebot unterwerfen heißt (...) nicht mehr wie für Hobbes, den Bürgerkrieg verhindern, sondern genau umgekehrt: es heißt ihn gerade aufbeschwören: 'S'opposer à la voix de la conscience, c'est toujours être injuste, c'est toujours justifier la révolte, et par conséquent toujours donner lieu aux plus grands troubles.'" <sup>29</sup> Conscience is here a social force; we can easily imagine how 'the voice of conscience' became 'the voice of the people'. There are several other elements in Koselleck's analysis, which I can only briefly touch upon. The moral critique of political power was enforced by an economic factor: the rise of a wealthy middle-class and a new upper-class, related to a thriving commerce and supported by a moral-economic ethos, meant that a new source of funds arose for the sovereign, who took their hard-earned money in great quantities.<sup>30</sup> This debt was at the same time a moral capital for society, especially because political power rested with the debtor. "In diesem Wechselverhältnis zwischen dem finanziellen Kapital, das in den Händen der Gesellschaft zugleich ein moralisches Guthaben war, und der finanziellen Verschuldung des Staates,

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<sup>28</sup> In *Leviathan*, Hobbes maintained that the sovereign should decide what the religion of the commonwealth should be; he was also to decide on the form of public worship. Only in the secret, internal space of conscience were people free from the sovereign's authority. See: Hobbes (2000), introduction: xxxviii-xliii. Insofar as Calvin wanted the state to meddle in that inner space Hobbes kept free from state interference, he pushed his absolutism further than Hobbes.

<sup>29</sup> Koselleck (1973), 43; 130.

<sup>30</sup> Koselleck focuses on the French situation here.



der aus politischer Machtvollkommenheit, aber ganz unmoralisch, die Schulden verdeckte oder ausstrich, liegt einer der stärksten sozialen Impulse für die Dialektik von Moral und Politik.”<sup>31</sup> A final important factor, intertwined with the economic factor, is the rise of a new philosophical conception of history, in which European history came to be seen as a history of progress in all aspects of life – progress, I might add, of which the economy was seen as an important, if not *the*, motor. But progress was also, as Koselleck says, the *modus vivendi* of critique.<sup>32</sup> Changing moral views were the surest sign of progress.<sup>33</sup>

Even if we agree with Koselleck that morality and politics diverged, and that philosophical arguments for freedom of conscience sprang from the dialectic between them, we must keep in mind that Enlightenment thinkers were not by definition those partisans for liberty of conscience they are often made out to be. “For the leading thinkers of the Enlightenment,” Andrew notes, “freedom of conscience was Hobbesian Erastianism, not Miltonian or Lockean separation of church and state.”<sup>34</sup> Enlightenment thinkers primarily resisted authority; religious groups proclaimed the sanctity of conscience.<sup>35</sup> Religious minorities, suppressed by absolutist rulers, expressed a religious critique of absolutism, the influence of which was no less than that of the moral critique uttered by philosophers and intellectuals.

The latter, however, was more in step with socio-economic developments. The diverse dimensions of societal order gradually disentangled themselves: a separation of interests occurred – and conscience and religion became one of those interests. Absolutist states were confessional states, based on the principle of *cuius regio, eius religio*; seventeenth- and eighteenth-century ‘secular’ critique of this regime entailed the idea that political order and religious order ought to be disconnected, in the best interest of both. The religious wars testify to the fact that religion had ceased to provide unity and stability to state and society.<sup>36</sup> Absolutism was a temporary solution, but its theoretical separation of inner and outer – which was by itself unacceptable to adherents to other confessions than the state religion – did not translate itself into a practice of toleration; in fact,

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<sup>31</sup> Koselleck (1973), 51.

<sup>32</sup> *Ibid.*, 91.

<sup>33</sup> *Ibid.*, 48.

<sup>34</sup> Andrew (2001), 117.

<sup>35</sup> See chapter 11.

<sup>36</sup> Wolin (2004), 337, notes that before Locke, most people saw conscience (but in this context we may also read: religion) as a unifying force. Exceptions are Machiavelli (1469-1527) and Hobbes. Locke follows Hobbes in looking upon conscience as a divisive force. This is not merely a new perspective on the same phenomenon – for what on earth would have brought about this change of perspective if conscience had remained completely the same? Conscience and religious conviction had indeed become a (but certainly not *the*) divisive force.

religious persecution was a distinctive characteristic of absolutist states. Thus, these states undermined their own stability. The reaction to this situation was an urge towards a disconnection of state and church – a disconnection that had in fact long been underway. Marsiglio of Padua’s arguments for toleration are informative in this regard. His ‘communal functionalist’ argument for toleration of dissenters was a socio-economic argument. Nederman writes: “According to the *Defensor Pacis*, the best and highest temporal aim to which good regimes can aspire is the provision of a sufficient or materially adequate existence. (...) [T]he structure of the Marsiglian community is determined by the wide-ranging socioeconomic functions that human beings are able to perform.”<sup>37</sup> Marsiglio argues, in Nederman’s words, that “the emergence of the community is stimulated by the growth of social complexity”.<sup>38</sup> A network of economic interdependence is created, which makes it imprudent, self-destructive even, for a community to exclude dissenters in all respects. Marsiglio agrees that heretics ought to be shunned, but “[t]his is to be understood in regard to belief and the observance of the rituals of the faith, rather than in regard to other domestic or civil intercourse”.<sup>39</sup> Marsiglio moves towards a secular public sphere. Nederman: “[B]y denying intercommunication of a purely secular nature between the orthodox and nonbelievers of all sorts, it is the faithful themselves who will be harmed: they will not be able to take advantage of those material benefits which constitute the very foundation of communal life.”<sup>40</sup> This is a strong, socio-economic argument for toleration of dissenters. Socio-economic relations, not faith, are taken to be the foundation of the community. This went hand in hand with a separation of church and state, for Marsiglio denied that the church had any authority in civil matters, or

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<sup>37</sup> Nederman (1994), 905.

<sup>38</sup> *Idem*.

<sup>39</sup> Marsiglio of Padua, *Writings on the Empire: Defensor Minor and De Translatione Imperii*, C.J. Nederman (transl.), Cambridge University Press, Cambridge, 1993, chapter 10.5, quoted in: Nederman (1994), 911. Compare Locke (1968), 79: “[N]o church is bound in the name of toleration to cherish in her bosom a man who, after admonition, continues obstinately to offend against the laws established in that society. For if they can be broken with impunity, the society will come to an end, since they are both the conditions of communion, and also the sole bond that holds the society together. Nevertheless, care must be taken that the sentence of excommunication carry with it no insulting words or rough treatment, whereby the ejected person may be injured in any way, in body or estate. For all force, as I have said, belongs to the magistrate (...). Excommunication neither does nor can deprive the excommunicated person of any of his civil goods or private possessions.”

<sup>40</sup> Nederman (1994), 912.

that they could take measures against heretics that would have an effect on a person's 'civil comforts'.<sup>41</sup>

In *Leviathan*, Hobbes writes:

"The office of the Sovereign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of *the safety of the people* (...). But be Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Common-wealth, shall acquire to himselfe."<sup>42</sup>

But while Hobbes followed this statement up with the assertion that the sovereign should provide public instruction, 'both of doctrine, and example', later authors tended to fence off an increasingly large area of the social from interference by the state. Whatever people did with their time, as long as it was not harmful to state or society, it was none of the state's business.

Conscience and freedom of conscience became an *interest* among others.<sup>43</sup> Wolin, taking Locke as an example, points out that the notions of conscience and (personal) interest 'coalesced', once the former was no longer necessary in defence of toleration:

"It is too often forgotten that Locke's case for toleration marked a decisive shift in the notion of conscience. The 'Puritan Conscience' had been conceived by its defenders as a disciplined mode of judgment, one controlled by the 'objective' standard of Scripture and steeped in religious instruction. One of the main reasons that the sects of the seventeenth century championed toleration was the possibility that a dissenting conscience might in fact be testifying to what was true. In contrast, what was controlling in Locke's argument was that conscience stood for a form of conviction rather than a way of knowing. Thus conscience meant the

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<sup>41</sup> Marsiglio of Padua, *Writings on the Empire: Defensor Minor and De Translatione Imperii*, C.J. Nederman (transl.), Cambridge University Press, Cambridge, 1993, chapter 15.6. Shame and disgrace were not taken to be civil discomforts. Cf. Southern (1990), 45: "Marsilius of Padua was the first impressive spokesman for secular rulers (...)."

<sup>42</sup> Hobbes (2000), 231 (chapter XXX).

<sup>43</sup> 'Interest' gradually came to be seen as 'a force that governed the world', and as the best indicator and predictor of the future behaviour of individuals and groups. A seventeenth-century writer names conscience, interest, and sense of obligation as the three 'only safe rules amongst men to judge of future events'; of these, interest was the most reliable. Religious minorities were held to pursue each their own interest; this was what divided them, and – if freedom of conscience was granted – what would guarantee social and political order. These things are discussed and explained in Gunn (1968), especially 559 and 562.

subjective *beliefs* held by an individual, and from this definition flowed the same characteristics which were later attached to interest.”<sup>44</sup>

Wolin finds these characteristics of interest “– its individualistic character, the subjectivity of a judgment about it, and the impossibility of imposing it –” in the work of Bentham and Mill, and notes they “were a faithful reproduction of those attributes assigned to conscience by Locke in his classic *Letter Concerning Toleration*”.<sup>45</sup> Edward G. Andrew points out that in his *First Treatise of Government*, Locke referred to reason, not to conscience, as the voice of God, where reason is a rather narrow principle, close to a calculation of interest: “For the desire, strong desire of Preserving his Life and Being having been Planted in him, as a Principle of Action by God himself, Reason, *which was the Voice of God in him*, could not but teach him and assure him, that pursuing his natural Inclination he had to preserve his Being, he followed the Will of his Maker.”<sup>46</sup> Andrew then quotes Michael Rabiech, who says that “by reinterpreting God as supporting his rational law of nature, Locke has left him in our conscience, but it is a conscience which sees little tension between self-interest and morality”.<sup>47</sup> In Hobbesian philosophy, and in Locke’s thought after him, an image of man as a primarily self-interested creature is created, a *homo economicus* that only lives with others ‘peacefully’ because it is in his best interest. (Economic) conflict and a theory of scarcity become the foundation of societal and political order.<sup>48</sup> In the same period, Bernard de Mandeville wrote his famous *The Fable of the Bees*, the sub-title of which (*Private Vices, Public Benefits*) refers to the idea that it is in the best interest of society if people egoistically pursue their own interests without consideration for others.<sup>49</sup> In Spinoza’s thought, too, the human urge towards self-preservation (which is an animal urge) was definitive for both ethics and politics. The social contract was based in this drive, and the state was driven by a similar principle. In the interest of order; that is, in its own interest, the state had to take human nature into account. This meant that it could not stop people from thinking, from philosophizing, for this was an ineradicable part of human nature. For Spinoza, the *right* to

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<sup>44</sup> Wolin (2004), 339-340. Some of the issues introduced here – that of the formalism and subjectivism of conscience – will be taken up in later subsections.

<sup>45</sup> *Ibid.*, 339.

<sup>46</sup> Locke (1999), 205 (I.IX.86) quoted from the 1988 edition in: Andrew (2001), 85-86.

<sup>47</sup> Michael S. Rabiech, “The Reasonableness of Locke, or the Questionableness of Christianity”, in: *The Journal of Politics*, Vol. 53, 1991, quoted in: Andrew (2001), 86.

<sup>48</sup> See Achterhuis (2003).

<sup>49</sup> This line of thinking was continued most obviously in the Scottish Enlightenment, in the work of Adam Smith – though it must immediately be said that he did not share the moral scepticism of the aforementioned authors at all.

philosophize was in fact the natural necessity to do so. Natural rights are what people naturally have the power and ineradicable urge to do.<sup>50</sup>

In the seventeenth and particularly the eighteenth century, it became common to think of conscience and religion in terms of interest. Part of the defence of religion against its critics was that it was profitable both to the individual and to society as a whole. Locke excluded atheists from considerations of toleration, because they could not be trusted. In society, religion provided the essential binding element of trust:

“[T]hose who deny the existence of God are not to be tolerated at all. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon or sanctity for an atheist; for the taking away of God, even only in thought, dissolves all.”<sup>51</sup>

An anonymous eighteenth century manuscript sums up the common thoughts and sentiments on the subject quite succinctly:

“It is an old saying, that every man is the artificer of his own fortune in the world. It is certain, that the world seldom turns wholly against a man, unless through his own fault. Religion is; in General; profitable unto allthings. Virtue, diligence, and industry, joined with a good temper and prudence, has ever been found the surest road to prosperity; and where men fail of attaining it, their want of success is far oftener owing to their having deviated from that road than to their having encountered insuperable bars in it.”<sup>52</sup>

Pierre Bayle had a remarkably deviant view, holding that religion was without consequence for society. In religion, people strive for a truth they will never know exactly; their orientation to truth is provided by the instinct of conscience.<sup>53</sup> But this is largely a spiritual and internal matter. According to

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<sup>50</sup> Plamenatz (1963), 79-80; Dreitzel (1995), 22-29.

<sup>51</sup> Locke (1968), 135. Locke also denied toleration to religious groups that by entering their church “*ipso facto* pass into the allegiance and service of another prince” (Catholics), and groups that consider themselves to have certain prerogatives others do not have, as for instance the prerogative to depose a king that is not to their liking. Locke himself did recognize a right of resistance, however; see Locke (1999), 404-405 (II.XVIII.209).

<sup>52</sup> Anonymous eighteenth century manuscript (in my possession), probably American; it appears to be an address to a certain company of people.

<sup>53</sup> Gianluca Mori (1997), 47, explains that ‘invincible ignorance’ necessitates the reliance on instincts like conscience, and that Bayle’s belief that no certain truth could be attained in these matters underlay his defence of toleration. He also points out that too much has often been made of Bayle’s stance for toleration. He did not so much advocate the rights of conscience, but rather a pragmatic regime of toleration in the interest of political stability.

Bayle, people seldom act from religious or moral principles; God has provided other principles that cause human action: the desire for approbation and fear of disapprobation, temperament, punishment and reward by governments – these, Bayle says, have a decisive influence on the human heart. He even asserted that, while a society of atheists was viable and sustainable, a society of true Christians would soon perish in its hostile environment. Dreitzel summarizes: “Die Freiheit jeder Art von ‘religiöser’ Überzeugung ist also individuelles Recht als Folge der Pflicht zur Wahrhaftigkeit, sie ist anthropologisch eine Folge der Verschiedenartigkeit der Menschen, sie ist politisch und sozial möglich, weil Religiosität im Grunde genommen sozial folgenlos ist – Gesellschaft und Staat werden von Gesetzen der Bedürfnisse und der Interessen, von Gewohnheiten und traditionellen Institutionen zusammengehalten.”<sup>54</sup> Those who thought of religion as profitable to the individual and society carried out the conflation of conscience and interest; Bayle in effect turned it into a private interest, being the most consistent with regard to the separation of state or societal interests on the one hand, and private religious interests on the other.<sup>55</sup>

In accordance with this line of thinking, freedom of conscience came to be seen as an interest like freedom of trade and the freedom to organize.<sup>56</sup> Marsiglio was early with his arguments in this direction. He was followed in the seventeenth century by people like Henry Parker, Henry Robinson and Sir William Temple. The first thought that the government should make sure there was freedom of religion, because this was of fundamental importance for free trade. Robinson, in his *Liberty of Conscience*, wrote that the worldly government had nothing to do with religious matters and claimed that any limitation of people’s freedom of religion would harm the prosperity of the nation. His great example was the tolerant and economically thriving Dutch Republic. Sir William Temple made use of the same argument.<sup>57</sup> Wolin points out that Locke based “his plea for toleration, at least in part, upon the example of economic activity”.<sup>58</sup> Religious

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<sup>54</sup> Dreitzel (1995), 21.

<sup>55</sup> Spinoza also privatized religion; Dreitzel (1995), 27, writes: “Die völlige Privatisierung der Religion kommt auch darin zum Ausdruck, daß bei Eiden nicht mehr Gott angerufen werden soll, sondern das ‘Wohl des Vaterlandes und die Freiheit’.”

<sup>56</sup> In this relation, the following remark by Benjamin (1990), 15, is interesting: “Those seeking compromise solutions to conflicts that appear to involve matters of principle often can reach a resolution if they recast such conflicts as conflicts of interests.”

<sup>57</sup> Guggisberg (1977), 474-475.

<sup>58</sup> Wolin (2004), 340. In contrast, it is illustrative to look at what Thomas Aquinas (1225-1274) says in his discussion of the question whether heretics should be tolerated: “[I]t is a much graver matter to corrupt the faith which quickens the soul than to forge money, which supports temporal life.” Thomas Aquinas, *Summa*

associations were seen as voluntary societies on a par with commercial societies. “Zunehmend wurde (...) die religiöse Spontaneität auch mit der unaufhebbaren Spontaneität des Denkens und des praktischen Urteils verbunden. Die ‘libertas conscientiae’ verband sich mit der ‘libertas philosophiae’, mit der Freiheit des ‘respublica literaria’, mit der ‘Freiheit des Handels’, mit der ‘Freiheit des Eigentums’, sie unterstützten sich wechselseitig oder wurden als Einheit gesehen. (...) Die Freiheit der Religionsgemeinschaften als Grundrecht verband sich mit der Forderung nach ‘Vereinigungsfreiheit’.”<sup>59</sup> Roy Porter writes: “Voltaire extolled the virtues of civil and religious liberty, English style, by picturing in his *Lettres Philosophiques* (1733) the scene at the London Stock Exchange. There Anglicans, Dissenters and Catholics, Jews and Mohammedans were all permitted to trade on equal terms. Freedom of trade went with freedom of religion, bringing peace and prosperity.”<sup>60</sup> And Wolin remarks that “[t]hat interest and conscience had coalesced was not lost upon the men of the eighteenth century”, quoting Morellet, who depicted the new era as one of ‘freedom of conscience in trade’.<sup>61</sup> Marx and Engels’ cynical remark that “[d]ie Ideen der Gewissens- und Religionsfreiheit sprachen nur die Herrschaft der freien Konkurrenz auf dem Gebiet des Wissens aus”, does not seem to be very far-fetched.<sup>62</sup>

In retrospect, then, we can say that it took a long period of strife, of religious wars and persecution, before a solution for the problem of order crystallized in the minds of men – a not at all perfect solution, but one to which historical circumstances gave rise. This was the separation of church and state. The state’s interest had gradually separated itself from what came to be the private interest of religion.<sup>63</sup> While religion retreated into a sphere of its own, the unity of the state and political stability were safeguarded by economic activity and prosperity, and more concretely by people’s freedom to pursue their own interests – a freedom limited by their power, of course. When toleration of dissenters was at the beginning of its career, the private sphere was that of religious dissidents only. Now, all of religion retreated

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*Theologica*, Thomas Baker, London, 1917, II-II, Question 11, Art. 3, included in Edward Peters (ed.) (1980), 182-183, i.c. 182. Concern for the soul slipped into the background in the seventeenth century, its place in the focal point of attention being taken by more mundane matters.

<sup>59</sup> Dreitzel (1995), 9-10.

<sup>60</sup> Porter (1990), 28-29. Cf. Stuurman (1995), 64.

<sup>61</sup> Wolin (2004), 340.

<sup>62</sup> Marx and Engels (1972), 480. In the original 1848 edition it read ‘Gewissens’ instead of ‘Wissens’.

<sup>63</sup> See Southern (1990), 34-37, where he explains how around 1100 separate secular and religious spheres began to emerge, and the secular ruler was ‘demoted from his position of quasi-sacerdotal splendour’, because “[t]he old sacred kingship had no place in the new world of business”.

into the private sphere. In a sense, all religious people were thereby on their way to become dissidents.<sup>64</sup> Freedom of conscience was largely the result of these changes, of a societal transition from a predominantly religious order (that, of course, had an economic and political dimension as well) to a society in which socio-economic interests provided the predominant principle of order.<sup>65</sup>

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<sup>64</sup> The Edict of Amboise (1563) allowed domestic exercise of their religion to dissenters among the nobility; the Edict of Nantes (1598) – which was revoked in 1685 – granted the same freedom to all Huguenots (French Protestants). I will not repeat the history of all such edicts, as it would merely be a repetition of what can be found in the works of Lecler, Guggisberg and many others.

<sup>65</sup> Thus, expediency played an important part in bringing about liberty of conscience. See chapter 11 for more on this point.



### **The economic language of conscience: an eighteenth-century example**

An eighteenth-century popular text illustrates the infiltration of economic vernacular in the terminology of conscience; *An Analysis of the Principal Duties of Social Life: Written in Imitation of Rochefoucault: In a Series of Letters to a Young Gentleman, on his Entrance to the World* begins letter V, "On the Sense of Equity, and the Light of Conscience", as follows:

*You will find in your inward feelings,  
if duly attended to, a fund of rules  
for your conduct, that will never lead you  
astray.*

*THE world is an immense community;  
for the welfare of which, its numberless  
constituents are, by a tacit compact, uni-  
versally united to each other.*

*HUMAN society may be likened to a co-  
partnership in trade; every member of  
which is intitled to an interest adequate to  
the capital which he puts into the common  
stock.*

Further on, it says:

*In order to direct our judgement in this  
necessary settlement of the reciprocal  
claims of society, Nature has given us  
the sense of equity; which, like an exact  
and faithful accountant, assigns to every  
one his proper share.*

(...)

*EQUITY is that unerring balance  
wherein conscience weighs the worth and  
demerit, the righteous claims and wrong  
pretensions of all; and where self is thrown  
into the common scale, without predilec-  
tion.*

John Andrew, *An Analysis of the Principle Duties of Social Life*, Richardson and Urquhart, London, 1783, 49, 51 and 55 (from *Eighteenth Century Collections Online*, published by Thomson Gale)

### 10.3. THE SECOND DIMENSION: THE ORDERED MIND

“To the conscientious persecutor,” Plamenatz writes, “the argument that, where thought is free, the truth must in the end prevail, seems paltry and sentimental; an argument attractive only to men lacking courage to exert themselves in defence of truth.”<sup>66</sup> If you allow people to think for themselves, they will think different things. They will think differently about moral and religious matters, too. These differences result partly from differences of perspective and context, but partly from the peculiar characteristics of the individuals concerned. Subjectivity, in other words, is inevitable. In epistemology, Whitehead defines ‘subjectivism’ as “the belief that the nature of our immediate experience is the outcome of the perceptive peculiarities of the subject enjoying the experience”.<sup>67</sup> In the present context, where we are concerned with the subjectivity of conscience, we might define this as the situation that the dictates of a person’s conscience are the outcome of the peculiarities (whether perceptive, inventive, or otherwise) of the individual in question. In other words: what this person’s conscience ‘says’ is not so much the result of the operation of objective reality on his or her mind, but rather of the activity of this mind itself. As I see it, an experience is always a unity of subject and object. Nevertheless, where the experience of ‘external reality’ is concerned, there can be differences in the contribution of the subjective and the objective element. The subject is part of reality, but an individuated part, and as such, it plays a more or less active role in ‘processing’ the reality that makes up its experience. Pure passivity, however, is an illusion – but so, probably, is its opposite, where subjectivity is all there is.

In late medieval thought, however, conscience was basically seen as a transmitter of values broadcast by God. That is, if it was a well-ordered conscience. How, then, did they deal with the problem of subjectivity? This is the subject of 10.3.1. The next subsection will deal with an attempted solution to the problem of subjectivity: the education of conscience. Subsection 10.3.3 discusses the dynamic between the subjectivity of conscience and formalism in the conceptualization of conscience, in relation to notions of freedom of conscience.

Before I enter into these matters I should answer one important question: what exactly is the *problem* of subjectivity? The answer depends on the context. ‘The’ problem of subjectivity continually changes shape. In scholastic times, the problem was that people could feel bound to do what was ‘objectively’ wrong. Were they then really bound to do as their conscience told them, or not? And what did this mean for the erring person’s soul? The problem of subjectivity appeared in the form of such questions.

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<sup>66</sup> Plamenatz (1963), 70.

<sup>67</sup> Whitehead (1938), 107.

With the Reformation, the problem of subjectivity took on a new form. A situation of enduring religious plurality had come into being, but all (or most) parties insisted on their adherence to the only true faith – they insisted, in other words, on their own objectivity. The problem of subjectivity, from the point of view of those religious parties that insisted on their own righteousness, was threefold: people who did not accept the true faith but indulged in their own fantasies forfeited their souls; the products of the subjective conscience threatened the community of true believers, who might be persuaded to deviate from the true faith; people with disordered minds constituted a threat to political stability, which was a precondition for the flourishing of the true church.

From the relatively disinterested perspective of ‘secular’ philosophers, it was clear that there was no objective criterion for truth in religious matters. Which convictions someone held could not but depend on contingent factors, on factors peculiar to the subject in question, on his or her upbringing, social environment, et cetera. The assumption of objectivity had to be replaced by the recognition of a plurality of centres of intersubjectivity, with each religious denomination constituting such a centre. If conscience is not objective and can lay no claim to truth, why would the state tolerate being confronted by beliefs it finds absurd or even dangerous? What authority does conscience have, if it can no longer claim to transmit God’s word? These are theoretical problems pertaining to the subjectivity of conscience – problems that receive their poignancy from the increased likelihood that the state will be confronted by the subjective conscience. Conflict between religious parties necessitated liberty of conscience, but the subjectivity of conscience seemed to undermine it. How could social and political order be maintained in view of the increasing assertiveness of the ‘subjective’ conscience? And why should anyone care what another’s conscience says? Such questions are still pertinent today. They pertain to the grounds of liberty of conscience, and therefore of conscientious objection.

### **10.3.1. The objectively erring, yet subjectively binding conscience: a prelude to freedom of conscience?**

Every work that pays more than minimal attention to the history of (freedom of) conscience says something about the medieval discussions of ‘contra conscientiam agere’. It appears at first sight that the idea, prominent in these discussions, of the objectively erring yet subjectively binding conscience constitutes an important step on the road to freedom of conscience. The relation between the two is not that straightforward, however.

The usual starting point in the treatment of this subject is Peter Abelard (1079-1142). According to Abelard, we know what God commands, that is: we know what is right, through revelation and natural law. Abelard gives priority to the latter and thereby to conscience. For Abelard, Romans 14:23: “omne, quod non est ex fide, peccatum est”, becomes the idea that

everything that is not in accordance with conscience is sin.<sup>68</sup> This must be understood to mean that acting against what one holds to be right and believes to be God's will is to be condemned. A strong subjective element is introduced here, for the criterion of sin is no longer merely whether one's action violates objectively ascertainable laws, but whether it goes against one's own subjective idea of what is right. It may still be possible to punish someone who followed his supposedly erroneous conscience, given that he violates a divine command. For Abelard, however, this person would not have *sinned*, as "non est peccatum nisi contra conscientiam" [there is no sin except against the conscience].<sup>69</sup> But even in the case of other scholastics who may have thought it possible to sin while following one's conscience, it is still true that sin and lawfulness have come to diverge. Going against one's conscience is sin, *irrespective* of whether the conscience is in accordance with divine law or not. That to act against one's conscience becomes the definition of sin in Abelard's thought is indicative of a shift of attention from the outward action to the actor's *intention*. And surely, of a man who knowingly and willingly acts against what he holds to be God's will on the one hand, and a man who does wrong, thinking that he complies and intending to comply with God's will on the other, the former is the more morally perverted of the two – that, at least, would be the scholastic train of thought. The reason why Thomas Aquinas held the objectively erring conscience to be binding for the subject was indeed that the subject held the dictates of his conscience to be God's will.<sup>70</sup> The authority conscience gained on this basis was a negative one: it was thought to be *wrong* to act *against* one's conscience, but that did not mean that it was always *right* to follow it.

In chapter 3, I argued that the insoluble problem of the objectively erring but subjectively binding conscience was the result of the increasing strictness with which conscience was defined. I claimed that "because conscience was taken to be an existent entity, not separate from, yet a definable part of a certain faculty [either the will or reason], it became an additional factor to be reckoned with in moral reasoning". Doing the right thing and following one's conscience made two; they were often not coincident. What interests us here is not so much (the solution of) the problem itself, but its relation to the later notion of freedom of conscience. It seems to me that the fact that these discussions occurred and that the focus of attention came to lie more with the intention of the individual is

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<sup>68</sup> Mock (1983), 31-32.

<sup>69</sup> Stelzenberger (1963b), 101.

<sup>70</sup> Aquinas (1981), Vol. II, 674-675 (First part of the second part, Q. 19, Art. 5). The objectively erring conscience was held to be only conditionally binding, for one could set it aside without sin, and, as Augustine of Ancona said, one was *obliged* to set one's erroneous conscience aside at the command of one's superiors (the pope, for instance). Augustine of Ancona (2001), 481.

indicative of a process, a change in mentality, that led also to the idea of freedom of conscience. On the other hand, these discussions make it very clear that the thirteenth century knew no such notion. It is evident that the idea of an objectively knowable universal truth was still uppermost in thirteenth-century thought. This made it hard for scholastic thinkers to deal with the growing awareness of man's subjectivity. The idea of the objectively erring but subjectively binding conscience is a signal of the occurrence of processes of divergence, but itself also an expression of a thoroughly objectivist and anti-relativist mentality.

Thomas Aquinas found a way of dealing with the problem of the *conscientia erronea* that left the divine nature of conscience unscathed. Conscience, as I have explained in chapter 3, was conceptualized in terms of 'synderesis' and 'conscientia'. The 'synderesis' (as a *habitus*) constituted the divine, infallible part of conscience; 'conscientia' was the application of the principles conveyed by 'synderesis' to particular circumstances. Now, in the application things could easily go wrong, mostly because people had an inadequate knowledge of the situation, or because they were mistaken in which principle to apply. Some ignorance was culpable, some was not; there were things one could have known and things one *should* have known. So the subjectivity of conscience, the possibility of divergence between the individual's conscience and what was held to be the objective truth, was seen from a thoroughly objectivist perspective and also framed by this perspective. By this I mean that the 'erroneous' conscience was treated as a case of ignorance (if not malevolence), and not as an expression of another view or opinion. The possibility of a more positive view of subjectivity was overshadowed by the idea of 'recta ratio'. Conscience was primarily seen as, ideally, a transparent medium of truth, which in practice suffered from a certain opaqueness, but only in the sense that it did not transmit or convey the truth properly, not in the sense that it had its own creative contribution as a source or locus of truth in its own right. When someone's conscience erred, it was because something went wrong with the message while it was on its way, not because it created its own message or as a whole went its own way. This perspective was completely different from that of those Protestants who would proclaim the sanctity of the individual conscience, or that of skeptical Enlightenment defenders of freedom of conscience.

### **10.3.2. The education of conscience**

I noted in the transition to part II that Luther's explicit enjoinder that the Christian's freedom of conscience was *not* a political freedom did not prevent some people from interpreting it that way.<sup>71</sup> The fact that Luther stated this

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<sup>71</sup> See Plamenatz (1963), 56: "[T]here were soon people willing to carry his principles much further than he had done. (...) These people (...) were called Anabaptists (...). Most of them were harmless, though some were aggressive and violent. Their

so explicitly indicates his concern about the anomic or even antinomian potential inherent in the concept (or at least in the formulation of the concept) of Christian freedom.<sup>72</sup> Calvin was aware of this threat even more than Luther.<sup>73</sup> Therefore, he placed much stress on the importance – or, better put: the obligation – of obedience to worldly authorities. In other words: he recognized the relation between the second and the first dimension of the problem of order. Like Luther, Calvin distinguished sharply between secular (or ‘temporal’) power and spiritual power. As Wolin says, the difference between them was not a difference in kind, but lay in “their range of objects or jurisdiction”.<sup>74</sup> Against radical sectarians who gave an anomic or anarchist twist to the concept of Christian liberty “Calvin asserted the value of the civil order for all men and its right to command Christians in particular”; against ‘flatterers of princes’ “he affirmed the independent power of the church and its claim to a distinctive jurisdiction”.<sup>75</sup> So Calvin was by no means against power and discipline in general, but only against misplaced employment of them. An example of the latter was provided by the papacy, against whom Calvin defended, in Wolin’s words, ‘the sanctity of the individual conscience’.<sup>76</sup> Wolin then remarks: “Having demolished the Roman case, Calvin could only salvage the same power for his own church by modifying the dogma of conscience. For this purpose the proper starting point was not conscience but order.”<sup>77</sup> The end to be achieved was the well-ordered conscience, Balduin’s ‘recta conscientia’. Calvin had to overcome the anarchic forces of ‘diversity in the manners of men’, the ‘variety in their minds’ and the ‘repugnance in their judgments and dispositions’.<sup>78</sup> The legislative power of the church was needed to remove the threat of anarchy. The principal power of the church, however, was jurisdiction. Wolin: “Its

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theories were denounced as subversive, and Luther was anxious to dissociate himself from them.” According to Plamenatz, “Luther saw the danger of allowing anyone, no matter how ignorant or fanatical, to preach what doctrines he pleased. Yet, lacking a true conception of liberty of conscience, he did not know how to reconcile the claims of faith with the need for order.”

<sup>72</sup> Andrew points out that “[t]he antinomian call of conscience came to prominence in seventeenth-century Britain”, among the radical puritan followers of Calvin. Andrew (2001), 32-33. The ambiguity in Reformation thought about conscience and its freedom is most clearly present, so J.C. Davis maintains, in the thought of William Ames; see Davis (2005).

<sup>73</sup> He fed it as well; in 1538, Calvin wrote to someone in Geneva: “If you entertain some doubts about [my calling] it is enough for me that it is quite clear to my own satisfaction.” As Walzer (1965), 64, says: “the conscience was set free”. Cf. Plamenatz (1963), 57: “Calvin was even less inclined to liberty than Luther.”

<sup>74</sup> Wolin (2004), 172.

<sup>75</sup> *Idem.*

<sup>76</sup> *Ibid.*, 173.

<sup>77</sup> *Idem.*

<sup>78</sup> *Ibid.*, 174.

pre-eminence came from the fact that it dealt with the most fundamental problem of order, namely, the discipline of the members.”<sup>79</sup> The ‘well-ordered conscience’ was both an end in itself, a means towards order within the church, and a means to attain a well-ordered society.

Here lies the second dimension of the problem of order and its attempted solution: the imposition of order on the minds of men through discipline; that is, through the controlled formation of conscience. Calvin was not just concerned with external control, but just as much, if not more, with internal control. This started from birth:

“There is no other way of entrance into life, unless we are conceived by [the church], born of her, nourished at her breast, and continually preserved under her care and government until we are divested of this mortal flesh and ‘become like the angels’ (...) we must continue under her instruction and discipline to the end of our lives...”<sup>80</sup>

Calvin was not merely interested in repressing private opinions, but in preventing them from arising. Hence his opposition to the Lutheran idea that everyone ought to be allowed to interpret the Bible for himself.<sup>81</sup> His concern was with education: “[I]here is a twofold government in man: one aspect is spiritual, whereby the conscience is instructed in piety and in reverencing God; the second is political, whereby man is educated for the duties of humanity and citizenship that must be maintained among men.”<sup>82</sup> Luther, too, was aware of the importance of the proper education of conscience and of the danger of the wrong education, as is clear from his complaint about priests who “in der Kirche heute kein anderes Amt führen, als daß sie die Gewissen verwirren, zugrunderichten und umstricken”.<sup>83</sup>

The concern with education was not limited to the Reformers. ‘Secular’ philosophers, too, saw the need for it; in their case, however, order in people’s minds was not an end in itself but a prerequisite of social and political order, and, in the case of Enlightenment philosophers, an instrument of progress. Hobbes urged the sovereign to instruct his people. He did not speak of the instruction of conscience in this context, because he had already relegated conscience to the realm of private opinion; the term bore the stench of subjectivity. Locke shared Hobbes’ distrust of conscience, but placed more emphasis on the importance (for better or worse) of socialization in the formation of conscience: “...it may come to pass, that

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<sup>79</sup> *Idem.*

<sup>80</sup> John Calvin, *The Institutes of the Christian Religion*, John Allen (transl.), Westminster Press, Philadelphia, n.d., quoted in: Wolin (2004), 175.

<sup>81</sup> Wolin (2004), 173.

<sup>82</sup> Calvin (1961), II.19.15.

<sup>83</sup> Luther (1983a), 12 (Aus der Auslegung von Psalm 13 [14], 1), [“in church fulfil no other function, than that they confuse, destroy and snare people’s consciences”].

doctrines that have been derived from no better original than the superstition of a nurse, or the authority of an old woman, may, by length of time and consent of neighbours, grow up to the dignity of *principles* in religion or morality.”<sup>84</sup> In chapter 4, I referred to Wolin’s remark that the “growing distrust of conscience stimulated the search for a new kind of conscience, social rather than individual, one that would be an internalized expression of external rules rather than the externalized expression of internal convictions.”<sup>85</sup> He also points out that the charge often brought to bear against liberalism, “of seeking to dissolve the solidarities of social ties and relationships and to replace them by the unfettered, independent individual, the masterless man”, is “almost without foundation and completely misses the liberal addiction towards social conformity” – an addiction Wolin goes on to trace through the works of Locke and especially Adam Smith.<sup>86</sup> What I have said in chapters 4 and 5 about Locke’s, Smith’s and Kant’s philosophy of education corroborates Wolin’s view. I might just add one remark: the notion of self-command, crucial in eighteenth-century philosophy of education, can be interpreted in two (opposite) directions. Self-command can be the ability to control one’s passions and inclinations so as to keep them within the bounds of the socially agreeable; this may be compatible with heteronomy. Someone who has learned, taught by the masters of fear and shame, to control that in himself which others disapprove of, has self-command in this sense. But self-command can also be interpreted to mean, quite literally, the ability to command oneself. To have self-command is then to be autonomous, and thereby relatively independent from the opinions of others. In times of social unrest, thinkers tend to emphasize the former kind of self-control, where social discipline is never really transcended. Jeremy Bentham is a case in point.

With the growing emphasis on the ‘education’ of conscience, which in some circles would definitely take the form of indoctrination, it seems that what was given with the one hand was taken away again with the other. The freedom that was gained on a societal level was compensated by compulsion on the psychological level. Internal checks took the place of external control. In a time of distrust of the individual conscience, the felt need for proper education increased. The distrust of conscience had some of its roots in an

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<sup>84</sup> Locke (1979), 81 (Book I, ch. III, § 22).

<sup>85</sup> Wolin (2004), 338. Hobbes’ and Locke’s distrust of conscience must be seen in the context of the radical puritanism in England in their time. The ‘Saints’, as these puritans were called, embodied the antinomian threat of the concept of Christian (i.e. Protestant) freedom.

<sup>86</sup> *Ibid.*, 343-345. Cf. Thomas L. Dumm (1985), who argues that “it is not natural law, but the liberal doctrine of toleration that has generated the policies that contribute to the advancement of (...) conformitarianism in the United States” (388). He shows how the Quaker experiment in Pennsylvania anticipated modern liberal society with respect to social control, conformity, and the penal system.



awareness of the subjectivity of conscience and the influence of socialization on the development of conscience. At the same time, the distrust of conscience led to an increased emphasis on the need for instruction and the necessity of discipline. All in all, it seems that there are two possible answers to the same problem (the problem of order in relation to conscience), a combination of which has been in effect in European history: the first solution is to leave conscience be in its own separate sphere and reduce its importance in the public sphere as much as possible; the second solution is to shape the individual's conscience in such a way that wherever it manifests itself, it can do no harm.<sup>87</sup> With regard to freedom of conscience, the 'gain' of the early modern period was that the distinction between an inner and an outer realm meant that the state did not interfere with people's interior. The downside was that every external expression was subject to the will of the sovereign. The gain of the Enlightenment was that the artificial distinction between 'inner' and 'outer' was abolished, which created room for a substantial notion of freedom of conscience. The downside (or at least the danger) here was that society (and, under its pressure, the state) increasingly interfered with people's conscience through discipline. With a more substantial freedom of conscience, the danger of an equally substantial *unfreedom* (in another sense) of conscience arose.

The increasing emphasis on the education of conscience, then, was a concomitant of the rise of notions of freedom of conscience; they are parallel developments, and this is no coincidence – even if, in the case of Christian freedom, the increased (felt) need for the education of conscience was the result of a misinterpretation by the people of what the Reformers meant by 'freedom of conscience'. A possible objection to this view is that the interiorization of moral principles started much earlier, namely in the *confessional*. I will have to deal with this objection before I move on to a discussion of the problem of subjectivity and the necessity for a more formal concept of conscience.

Confessions were part of Christian practice from the beginning. As a catholic institution, it is part of the sacrament of penance. At first confessions were made publicly, later they became private and secret. Aron Gurevich notes that auricular confession (confession by whispering in the ear of the father-confessor, or simply private confession) was followed up by public punishment of sinners until as late as the thirteenth century.<sup>88</sup> Gurevich states that “[t]he confessional was designed as a place of self-analysis under the guidance of the priest” and that the parish priest “had the task of directing the religious life of his flock. It would have been very difficult to control successfully their private and public behaviour without

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<sup>87</sup> With regard to the first solution, see Koselleck (1973), chapter 1.

<sup>88</sup> Gurevich (1997), 24.

confession and that useful tool that helped to organize it, the penitential.”<sup>89</sup> It is significant that Gurevich speaks of private and public *behaviour*, not of conviction. Nevertheless, the term ‘self-analysis’ seems to indicate an important degree of interiority. I will not deny the truth of this, yet it must not be overstated. In practice, confession could easily become (by repetition alone – did not Oscar Wilde say that “all repetition is anti-spiritual”?) an almost meaningless ritual, a standard procedure to cleanse oneself, and especially to fulfil one’s religious obligations. The role of ‘self’ in the self-analysis Gurevich mentions was quite limited. The confessional was designed in such a way that control stays mainly external and does not achieve the character of self-control. This becomes quite clear when one attends to the element of the witness we identified in chapter 1 as a core element of the symbol of conscience. The sinner uses the priest, the father-confessor, as his witness, *not* himself or his own conscience. In the context of the confessional conscience retains its original meaning of a knowing-with-others. This means that the sinner had to be aware of which part of his behaviour fell under the heading of sin, but this could be a fairly disinterested awareness – disinterested, except perhaps to the extent that he would be worried about the consequences of his actions for himself. Simply put, the sinner would need *consciousness* of sin, not conscience. The story Kittsteiner tells as an introduction to his book on the origins of the modern conscience is illustrative in this context:

“In the evening of the twelfth of May 1787 Karl Philipp Moritz writes an entry in the diary of his journey through Italy. In Fondi a young man has been killed, that was apparently caught up in some quarrel. In town they say about him that he, instead of dealing with his business himself, would have done better to turn to a ‘*huomo di Conscienza*’, a Man of Conscience, for advice, that is to a clergyman or at least to a man that isn’t poor, that doesn’t come from the rabble.”<sup>90</sup>

So, even late in the eighteenth century, conscience was not much interiorized with people in rural villages in Catholic Italy – much to the astonishment, indignation even, of the enlightened traveller. Without claiming that the situation would have been completely different in small villages in Protestant countries, it seems safe to say that the confessional did not greatly stimulate

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<sup>89</sup> Ibid., 24 and 79. A penitential was a sort of ecclesiastical rule manual which prescribed by which punishment different sins were to be corrected. Sometimes, penitentials contained questionnaires that the father-confessor could use in questioning the person confessing to him, so as to help him establish the nature and gravity of the transgression and judge it. Penitentials, unofficial books that had originated from the needs of local clergymen, were officially forbidden in the ninth century (25), but continued to be in use.

<sup>90</sup> Kittsteiner (1995), 13 (my translation).

an inward turn; the conscience of Catholics was not transformed by the confessional into 'in internalized expression of external rules'.

That moral education in general was still in its infancy is also testified to by the clerical use of penitentials. Not only lay people were quite ignorant of religious morality; priests too needed a reminder now and then. The penitentials were of use to priests who were uncertain about what behaviour could be tolerated and what could not. Even among the clergy, religious morality was not very much internalized.

The privatization and interiorization that carefully set in during the Middle Ages, in the practice of confession, received a strong impulse from Protestantism. The anomic threat inherent in the notion of Christian freedom was countered by an emphasis on discipline and the shaping of conscience. Calvin's 'metaphors of violence', as Bosco called them, certainly had a function in this respect. Internalization of rules often proceeded, as Adam Smith also noticed, through fear. Thus arose the disciplined character of the individual that obeyed the Divine Voice in himself – the character that was, in Max Weber's eyes, indispensable to the development of capitalism; that was demythologized by Marx, looked upon with contempt by Nietzsche, and psychologically explained by Freud.<sup>91</sup>

### **10.3.3. The problem of subjectivity and the necessity of formalism**

In the previous chapter, I explained what kind of concept of conscience was a prerequisite for any notion of freedom of conscience. The inversion of meaning I described there had two parts: a move from the concrete to the abstract and one from the abstract to the concrete. The first was a move from conscience as knowledge of a concrete act to conscience as a moral faculty or moral sense, or as moral consciousness in general. I have described the second as a move from conscience as something (a certain kind of knowledge) in which you participate to something (some 'thing') everyone individually owns. The former of the two relates most clearly to the second half of the title of this subsection, 'the necessity of formalism'; the latter is more directly related to the problem of subjectivity – though the issues of formalism and the subjectivity of conscience are closely connected.

'Formalism', in this context, refers to the characteristic of a concept of conscience that it focuses not on the content of conscience, but on more formal features; these may include the function of conscience, but also its origin (as a natural given, or as divine) and its nature, formalistically defined (as, for instance, the meeting-place of God and man). I have explained what I mean by subjectivity in this context earlier in this chapter. The subjectivity of conscience (more precisely: the existence of a plurality of centers of inter-subjectivity) posed practical and theoretical problems. Problems on the practical level were conflict, disorder, and threats to social and political

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<sup>91</sup> See Hammond (1993), chapter 2.

stability. These necessitated a separation of church and state and a practice, at minimum, of toleration, and preferably of freedom of conscience. As the personal importance of conscience had not lessened but rather increased, conscience had to be accommodated to some extent with a view to political stability alone. Defenders of freedom of conscience needed to provide a foundation for the importance of conscience. Because of the diversity of consciences, this required a new approach to conscience. While once the right to follow one's conscience was based in its authority and that authority in the objective (God-given) truth of its dictates, this idea had lost much of its acceptability in the seventeenth century. With objectivity, the authority of conscience was also in danger of disappearing – and thereby its possible right to resist the authority of the state. Either the authority had to be given new support, or the right to follow one's conscience had to be based in something other than the authority of conscience. Both solutions were proposed. The authority of conscience remained based in its relation to God, but no longer in the sense that God informed the conscience; it was now seen as a more formal relation, which nevertheless endowed conscience with an aura of sanctity. But liberty of conscience also came to be seen as a natural right regardless of the matter of its authority. Many kinds of arguments were produced. Locke advanced fairly traditional arguments, saying, for instance, that each individual was best placed to care for his or her own soul, and that it was irrational to try to impose a religion.<sup>92</sup> He also offered some newer arguments, related to the authority of the worldly government, the limits of which were set by the nature of the ends for which it existed.<sup>93</sup> Liberty of conscience, in brief, could become a natural right because the right of others to interfere with anyone's conscience was denied. This view was supported by a separation of law and morality: as long as people kept to the law, what they did was nobody's business. This line of argument reached its apex in John Stuart Mill's *On Liberty*.<sup>94</sup>

The principle of freedom of conscience only arose when the objectivity of conscience could no longer reasonably be upheld. Historically, the 'problem' of subjectivity was an important factor in the genesis of the secular notion of freedom of conscience. But it did necessitate another, more formal, approach to conscience; and this, too, was a prerequisite for the rise of the notion of freedom of conscience. Substantial definitions of conscience had become inadequate in face of the plurality of beliefs and the concomitant loss of the possibility to claim objectivity; the reality of conscience was still there; plurality and conflict necessitated liberty of conscience; a new concept of conscience was necessary to accommodate the

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<sup>92</sup> See McKinnon (2006), 7-10; Plamenatz (1963), 77-88.

<sup>93</sup> Plamenatz (1963), 83.

<sup>94</sup> See Mill (1992), 1-110, especially 15; McKinnon (2006), 10-13.

second and third point – this had to be a more formal approach to conscience. Let us look at this in more detail.

A certain degree of formalism was a necessary requirement for any notion of freedom of conscience. The Christian notion of freedom of conscience as developed by Luther and Calvin, however, does not depend on a formalistic concept of conscience in exactly the same way the ‘secular’ notion of freedom of conscience does.<sup>95</sup> For the latter notion of freedom of conscience – the one that would become the most influential and with which we are, in the end, concerned in this chapter – the idea that it is ultimately undecidable whose conscience ‘is right’ is fundamental. For Luther and Calvin, this was not an issue. So the secular notion of freedom of conscience claims this freedom for (in principle) any conscience, *regardless of its content*. The secular notion of freedom of conscience is not that of a freedom merely for those with a Christian (read: Protestant) conscience, but for everyone with a conscience – that is, for every human being.<sup>96</sup>

It is no coincidence that what we will find were two main inspirations for the secular notion of freedom of conscience at the same time inspired a more formalistic concept of conscience.<sup>97</sup> Mysticism and humanism stimulated the development of a concept of conscience that focused not on the content of conscience, but on its formal or unspecified relation to God. The Thomistic concept of conscience entails a more substantial view of the relation between man’s conscience and God. The general principles conveyed by the ‘synderesis’ are of divine origin. Conscience, on this view, derives its authority from a more substantial relation to God. The substantial element in this relation, however, must not be overstated. The principles of ‘synderesis’ are of a highly general nature; they are of the kind ‘do good and avoid evil’. Much of the objectivism that humanists and mystics at least partially let go of lay not in the Thomistic concept of conscience itself, but outside it, in the conviction that with the help of the two revelations of the Book and of Nature it was possible to ascertain without doubt whether someone’s conscience was in error or not.

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<sup>95</sup> By ‘secular’, I do not mean to suggest that this political-judicial notion has nothing to do with a religious conscience; it is merely meant to distinguish this notion of freedom of conscience from that of Christian freedom.

<sup>96</sup> Of course there were all kinds of discussions about who were human beings and who were not, and about distinctions between superior and inferior human beings. Undoubtedly, there were many ‘enlightened’ men in Europe who thought that negroes did not have a conscience, in the sense that they did not even have that spark in them ‘that was not even extinguished in the breast of Cain’. From another point of view, from which conscience is seen as a culturally specific product of a unique historical development, these men may have been right. But the point is that the secular notion of freedom of conscience did not, in principle, restrict this freedom to a certain privileged group of people.

<sup>97</sup> See the subsection on toleration in chapter 11.

A number of related shifts were of great importance in the development of the notion of freedom of conscience.<sup>98</sup> In fourteenth-century thought, the positions of God and man in relation to each other changed significantly. From the eleventh century onward, religious experience became more emotional in nature. Also, and connected with these changes, a stronger appreciation of and attention for the ‘this-worldly’ developed. In *Passage to Modernity*, Louis Dupré explains how God became a more removed figure, of less relevance (eventually) to the world. He lays most responsibility for this with nominalist philosophers who, by claiming that the order of things is principally beyond man’s capacity to understand, helped create a division between the natural and the supernatural.<sup>99</sup> Now, if God is seen as belonging to the separate and unintelligible realm of the supernatural, the only way to reach God is through mystic experience.

Mysticism was not a new phenomenon, but it gained in importance in the second half of the Middle Ages. The important scholastic Bonaventure had affinities with mysticism. Somewhat surprisingly, he was less lenient with regard to the erroneous conscience than Aquinas.<sup>100</sup> In general, however, the influence of mysticism was towards tolerance and toleration. A central formula in humanist-mystic thought and a precursor of ‘freedom of conscience’, as we will see further on, was that of ‘not forcing the conscience’. An important influence of mysticism on the notion of conscience lay in an emphasis on spiritual purity instead of conformity to external (religious) laws, as found in the work of Sebastian Franck.<sup>101</sup> As I explained in chapter 3 (subsection 3.3.2), mysticism, a more intense religious experience (including the experience of conscience), and the rise of cities and urban life, created a dynamic towards a plurality of beliefs, towards dissent. For this reason, too, mysticism was an important factor in the development of the notion of freedom of conscience.

The greatest ‘necessitator’ of a formalism of conscience was the existence, since the Reformation, of a religious plurality that was there to stay. That is, it was necessary if one had no wish to fight this plurality and at the same time wanted to uphold the authority of conscience. This authority had always depended on its relation to God, and continued to do so, but in a different way. In the mystic tradition, a shift of emphasis occurred from contemplation to love. According to Dupré, contemplation came to be identified with love. The relation to God become more emotional, as well as

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<sup>98</sup> From now on this will exclude the Lutheran notion of Christian freedom, unless otherwise stated.

<sup>99</sup> Dupré (1993). Interestingly, the voluntaristic view of God that underlies this worldview receives a secularized form in Hobbes’ *Leviathan* (immortalized in Carl Schmitt’s phrase: “auctoritas, non veritas facit legem”). See Bloch (1977), 61.

<sup>100</sup> See Bonaventure (2001).

<sup>101</sup> Vermeulen (1989), 48.

more 'earthly', as is visible in the new devotion of Christ, concentrating on his humanity and suffering. In his presentation of Bonaventure's views, Dupré writes: "In the contemplative love of Christ (...) the mind assimilates the forms in a way that surpasses the truth of abstract knowledge. True cognition consists in uniting a created image with its personal archetype, Christ, the synthesis of all ideas. If the essence of all ideas resides in an individual, the weight of knowledge shifts from the abstract universal to the singular."<sup>102</sup> The shift in mysticism towards man's inner life and towards individuality in general had its counterpart in the nominalism of John Duns Scotus (ca. 1266-1308) and William of Ockham (ca. 1285-1347). The former introduced the notion of a *forma individualis*, by which individuality was emancipated from the realm of contingency. The latter abandoned the idea of knowledge as participation in universal forms. For him, in Dupré's words, the "only access to the real consists in an intuition normally conveyed through the senses. (...) God may directly infuse an intuition without sense impression."<sup>103</sup> With this view, Ockham was quite close to the original meaning of 'syneidesis', as a more intuitive kind of knowledge than 'conscientia'; it would also become a persistent element in thought about conscience throughout the modern period. In ethical theory in the twentieth century conscience would be associated primarily with ethical intuitionism.

In more formalistic views of conscience, it was seen as the meeting-place of God and man, but in this meeting no objectively ascertainable universal truths were conveyed. Furthermore, it was less a matter of reason than of emotion. Yet, the authority of conscience remained, due to its relation to God. Humanist thought, of which the central notion is that of the dignity of man, supported the authority of the private conscience; the dignity of man *is* the dignity of conscience, in a sense. Man gradually came to be regarded as a source of value in itself. I said earlier that a formalism of conscience was necessitated by the existence of religious plurality. Analogously, a somewhat pragmatic foundation for the humanist idea of the dignity of man can be pointed out. The notion of the dignity of man was bound up with the 'rise of the individual'. Kerrigan and Braden show how the latter is related to the recognition of the fact that people hold different opinions. For the humanist philosopher Marsilio Ficino (1433-1499), there was one truth, but, in Kerrigan and Braden's words, "we know that our obvious space-time uniqueness translates into significant metaphysical and religious uniqueness because we have intellectual and temperamental differences. We do not see eye to eye, therefore we are..." They quote Ficino: "For at the same time, some affirm and others deny the same thing; some want it, others do not."<sup>104</sup>

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<sup>102</sup> Dupré (1993), 38.

<sup>103</sup> *Ibid.*, 39.

<sup>104</sup> Kerrigan and Braden (1989), 112.

A formalism of conscience was made possible by an element of Christian thought that had been present from the beginning (being a result of the encounter of Judaeo-Christian and Greek thought), and that was part of ‘mainstream’ thought, not merely of undercurrents. I am referring to the important idea of *natural law*, which provided access to secularity from within Christian thought.<sup>105</sup> Natural law theory was important throughout the Middle Ages, and a particular kind of natural law theory also became influential after the Reformation, not least in the context of the development of the secular notion of freedom of conscience. Schockenhoff remarks, with regard to the situation of conflict of the sixteenth and seventeenth century: “Weil die Religion selbst zur Ursache kriegererischer Auseinandersetzungen wurde, konnten Einheit, Freiheit und innerstaatlicher Friede nicht mehr religiös, sondern nur mehr durch den Rückgriff auf ein allgemeines Naturrecht und die in ihm verankerten bürgerlichen Freiheitsrechte begründet werden.”<sup>106</sup> Natural law theory and the new importance assigned to the individual combined to engender the idea of natural rights, of which the right to freedom of conscience would become one, perhaps even the most important.<sup>107</sup> This was the natural law tradition of Althusius (ca. 1563-1638), Hugo de Groot (Grotius) (1583-1645), Pufendorf, Thomasius (1655-1728), and Wolff (1679-1754), and in the Anglo-Saxon tradition that of Hobbes and Locke. There is no contradiction in saying that the grounding of freedom of conscience in a natural right has its source in a natural law tradition that includes one of the strongest opponents of freedom of conscience, Thomas Hobbes. The attitude taken towards freedom of conscience depended, in this tradition, on the fundamental view of human nature that lay at the foundation of one’s natural law theory. Those with a pessimistic view of human nature, like Hobbes, tended to distrust conscience and restrict its influence. Thomasius’ ideas show how natural law theory both provided a foundation for freedom of conscience and helped undermine it, by referring conscience to a completely subjective sphere. Thomasius distinguished sharply between natural law and positive law. For instance, according to Thomasius, polygamy was only prohibited by positive law, not by natural law. Positive law was just, in Bloch’s words, “the ordering of the external relations of individuals”. It became separated from morality, which meant, on the subjective side, an ‘emancipation of conviction’. Bloch notes:

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<sup>105</sup> This was pointed out by Gerrit Steunebrink on a symposium on religious tolerance, held in Nijmegen on 23-06-2004.

<sup>106</sup> Schockenhoff (2003), 20. [“While religion itself became the cause of bellicose disputes, unity, freedom and state-internal peace could no longer be religiously grounded but only by recourse to a general natural law and the civil rights of freedom anchored in it.”]

<sup>107</sup> Cf. Plamenatz (1963), 77-88. On the development of the idea of a right to freedom of conscience and its juridical embodiment, see: Vermeulen (1989), 58-62, or Scholler (1958), 34 and further.



“Moral wurde so zum Synonym für eine zunächst inwendige Gruppe subjektiver Rechte, für das Recht zur Befolgung der Gewissenspflicht, als einer äußerlich unerzwingbaren, folglich auch äußerlich unverbietbaren. (...) Moral ist bei Thomasius ein Asyl der Gewissensfreiheit, ein Naturrecht der Toleranz.”<sup>108</sup> His theory also exhibits the self-undermining tendency that is typical of all ideological grounding of freedom of conscience, as we will see further on.

While freedom of conscience came to be seen as a natural right, conscience came to be looked upon as a *natural* endowment of man, as I have shown in chapter 6. It came to be seen, in the late Middle Ages and early modernity, as a ‘natural instinct’. In the seventeenth and eighteenth century, conscience acquired a place (and sometimes it took pride of place) in descriptions of the organisation of human nature. In chapter 5, I mentioned the seed-metaphor for conscience, which became popular in the sixteenth century, and was much used by Calvin. One spoke of seeds planted by God to signify the core of conscience that lies in man. Thomas Reid adopted the metaphor, speaking of conscience (or moral judgement) as something that “grows to maturity from an imperceptible seed, planted by our Creator”.<sup>109</sup> In “Observations concerning Conscience”, Reid writes:

“The seeds, as it were, of moral discernment are planted in the mind by him that made us. (...) Their progress depends very much upon their being duly cultivated and properly exercised. (...) We must not therefore think, because man has the natural power of discerning what is right and what is wrong, that he has no need of instruction; that his power has no need of cultivation and improvement; that he may safely rely upon the suggestions of his mind, or upon opinions he has got, he knows not how.”<sup>110</sup>

This brings us to the problem of the subjectivity of conscience. We have seen that conscience is still looked upon as connected to God, from which connection it derives its dignity and authority – a dignity and authority necessary to support also what I have called the secular notion of freedom of conscience.<sup>111</sup> The connection with God lies not in the content of

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<sup>108</sup> Bloch, 59-67, in particular 67. [“Morality thus became a synonym for an in the first instance internally directed group of subjective rights, for the right to obey the duty of conscience, as something externally incoercible, and therefore also externally unprohibitible. (...) With Thomasius, morality is an asylum of freedom of conscience, a natural right of toleration.”]

<sup>109</sup> Reid (1999), essay V: “Of Morals”, chapter 1: “Of the First Principles of Morals” (640).

<sup>110</sup> Reid (1999), essay III, chapter VIII (595).

<sup>111</sup> Perhaps one could say that this dignity and authority were a necessary support *especially* for the secular notion of freedom of conscience. The Lutheran and Calvinian notion of conscience underlying Christian freedom was a substantial notion; it was supported by its content. Moreover, their notion of freedom of

conscience, but in the fact that it is implanted in us by God. There is a growing awareness that socialization plays a role in the formation of conscience; that is: an awareness that the conscience has to be formed.<sup>112</sup> This awareness is expressed in the metaphor of the seeds of conscience. It entails also an awareness of the vulnerability of conscience. The authority of conscience eventually became truly a matter of faith, as is clear from the following passage from Thomas Reid:

“The faculties which nature hath given us, are the only engines we can use to find out the truth. We cannot indeed prove that those faculties are not fallacious, unless God should give us new faculties to sit in judgment upon the old. But we are born under a necessity of trusting them.”<sup>113</sup>

We have to trust conscience, although we do not know whether it conveys truth or not, because it is all we have. This is a common sense argument, but it points to the essential change that occurred in the preceding centuries, by which conscience turned from something with a basis in God-given knowledge and capable of apprehending objective truth to a private and ultimately subjective principle. Of course, when conscience came to be seen as private, as a moral sense every individual possesses, it was not immediately seen as subjective. It is very well possible to uphold a view of conscience as private and particular, but not subjective in the sense in which I defined subjectivity at the outset of this subsection. Nevertheless, the dynamics of thought were such that conscience gradually came to be seen by its critics as purely subjective. In combination with other factors (particularly the common indicative understanding of conscience, which was very much at odds with the subjectivity perceived by critics), this led to the expression of severe criticism of the notion and its authority. The first wave of criticism occurred in the seventeenth century; the second in the nineteenth and twentieth century, leading to the virtual abandonment of the notion in both philosophy and psychology.

A self-undermining dynamic is at work in the process through which the notion of freedom of conscience arose. An increasing plurality of beliefs, entailing a decrease in inter-subjectivity (or an increase in centres of inter-subjectivity) and an increase in subjectivity, necessitated a more formal approach to conscience. A certain degree of formalism (a shift of emphasis away from the content of conscience) – and, as we will see, a certain degree

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conscience did not need a similar support as the secular notion, because it was primarily a ‘freedom *from*’ (guilt, the law), not a ‘freedom *to*’ (follow the dictates of one’s conscience).

<sup>112</sup> See chapters 4 and 5 and the previous subsection.

<sup>113</sup> Reid (1999), essay III, chapter VI (591). Butler’s insistence that conscience “carries its own authority with it” was not a viable solution to the problem of the authority of conscience.

of skepticism or truth-relativism, a degree of individualism in the conceptualization of conscience – was a necessary precondition for the notion of freedom of conscience to arise and for it to gain juridical significance. At the same time this formalism, the skepticism, and the relativism undermined conscience and its authority, for why would anyone respect the dictates of another's conscience, when these can lay no claim to truth whatsoever?<sup>114</sup> Conscience became emotionalized, which is reflected on the level of theory in a revival of the mystic symbolism of the 'spark of conscience' and the 'candle of the Lord', and at the same time in the depreciatory way in which someone like John Locke spoke of conscience in his philosophical works. Andrew writes: "Locke's *Essay [concerning Human Understanding]* championed rational autonomy and deprecated conscience as irrational."<sup>115</sup> Locke shared Hobbes' distrust of conscience and of people using the term 'conscience' very easily, as a slogan by which they clothe their opinions with a dignity they do not deserve and shield them from criticism.<sup>116</sup> In an earlier section, I quoted Wolin, who pointed out that "what was controlling in Locke's argument was that conscience stood for a form of conviction rather than a way of knowing. Thus conscience meant the subjective *beliefs* held by an individual..." As I explained earlier in this subsection, the attitude Hobbes and the early Locke took with regard to freedom of conscience is the attitude of one variant of the new natural law tradition. The subjectivity that makes them distrust the private conscience, however, also adheres to conscience as perceived by the champions of freedom of conscience in the natural law tradition, as is clear from what Bloch said about Thomasiaus. Though one can, rather roughly, distinguish between an Anglo-Saxon tradition and a German tradition, in the latter of which conscience was not emotionalized the way it was in Anglo-Saxon thought, conscience does not escape subjectivity in this tradition. Samuel von Pufendorf (1632-1694), for example, adopts of the medieval conceptualization of conscience only the 'conscientia', and drops the innate, primordial 'synderesis'. He understands conscience as a judgement of the intellect, and sees 'leges naturales' (natural laws) not as inscribed in man's heart, but as to be discovered by intellect from study of the human condition.<sup>117</sup> In this German tradition of thought, of which Kant can also be said to be an exponent, the subjectivity of conscience can only be held at bay by insisting on the universality of reason – something, obviously, that people would not remain prepared to do.

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<sup>114</sup> Some answers to this question have been given; Luhmann in fact gives quite a good answer to it. Generally, however, skepticism with regard to conscience, its value and its dignity, came to prevail.

<sup>115</sup> Andrew (2001), 83.

<sup>116</sup> See Andrew (2001), 86.

<sup>117</sup> Mock (1983), 39.

I will leave it at this, as I have explained in chapter 6 how, in the German tradition, traditional and rationalistic concepts of conscience were criticized by Schopenhauer, Nietzsche and Freud, and how the Anglo-Saxon conceptualization of conscience led to Darwin's relativistic view of conscience. I believe it has become clear enough that and how plurality and subjectivity necessitated formalism. This formalism may have been both historically and conceptually necessary for the notion of freedom of conscience to arise, but it could hardly mask the subjectivity of conscience that lurked in the background as a potential threat to social and political order. The formalism of seventeenth- and eighteenth-century concepts of conscience did not entail a complete acknowledgement of the subjectivity of conscience; these concepts were based on the assumption of the universality of reason.<sup>118</sup> They were not informed by a consideration of the consequences of allowing complete liberty of conscience. We will see in chapter 12 that Luhmann, in answer to the problem of subjectivity, devised a more (though not fully) adequate formalist concept of conscience.

The challenge that needs to be met, as Luhmann tries to do, is this: how do we retain what we consider to be the supremely valuable principle of freedom of conscience (as embodied also in legal provisions for conscientious objection), in face of the subjectivity of conscience? This means that the problem of the subjectivity of conscience needs to be answered. A more formal approach to conscience seems to be required; we will see in chapter 12 that Luhmann recognizes this, but we have seen that this was also the historical answer to the problem – if not yet an adequate answer.

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<sup>118</sup> In this respect the ideas of the Socinians (a Protestant sect) were superior. Plamenatz (1963), 73, summarizes them as follows: "Where every man judges for himself, they said, there must be diversity of opinion; and this diversity, since it is inevitable, must be accepted with a good grace." Interestingly enough, Socinus (1539-1604) came up with a rather pragmatic defence of conscientious objection to military service by members of the Polish Brethren Church. He wrote that "when we say that it is not lawful for a Christian to wage war or fight, we are speaking of a private person and not of the king, prince or magistrate". Moreover, "[n]ot all those things which the Christian is forbidden to do are wrong in themselves and to be condemned". He thus anticipated a Hobbesian separation of a private and a public sphere – the latter being the one to which the use of violence properly belongs – by approaching the topic from the other side; in fact, he went further than Hobbes did, for he saw Christians as belonging to the private sphere alone, whereas for Hobbes everyone's actions belonged to the public sphere. Socinus' pragmatism lay also in his view that it was unproblematic to pay war taxes, or, if unavoidable, to take up arms without using them to kill or wound anyone. See Brock (1992), 679 (note 21) and 678-687.

#### 10.4. CONCLUDING REMARKS

This chapter dealt with the main problem that beset(s) the theory and practice of freedom of conscience, namely the problem of order in its two dimensions: political order, and order in people's minds. The latter I have also called the problem of subjectivity. Reviewing this chapter, we may note that both the ethical question of whether freedom of conscience is a good that we should try to realize, and the prudential question of whether it is wise in a practical sense, or expedient, to realize it, cannot be answered without reference to the problem of order. If we want to answer either of these questions, we will have to deal with the problem of order. Is it good that people are at liberty to 'care for their own soul', whether they seem to make a mess of it or not, or would it be better to 'educate' them, or to repress all outward expressions of the way they 'care for their soul'? And which of these alternatives serves the goal of social and political stability best? If liberty of conscience is, as Plamenatz claims, "the right to hold and profess what principles we choose, and to live in accordance with them"; if, as Bloch claims, liberty of conscience became, in Thomasius work, the subjective right to follow one's conscience; this means that the conscience of the individual may clash with the authority of the state.<sup>119</sup> This is also implied in what Koselleck describes as the separation of morality and politics. Morality, whether as a social force or in the form of the individual conscience, constitutes a potentially critical force over against the state. From the perspective of the state, then – or from the perspective of social and political order – it stands to reason that freedom of conscience must have its limits. It must be compatible with the demands of social and political order; moreover, it must be compatible with other rights. No right is absolute; all rights all limited by each other.<sup>120</sup>

Answers to the question how the balance must be struck will occupy our attention in chapter 12. For the most part, that chapter will deal with (more or less) contemporary theories of freedom of conscience, mostly from the field of the philosophy of law. The question there will be how legally to accommodate for the valuable (or at least greatly *valued*) principle of freedom of conscience in a way that is compatible with the demands of order. Before that, I will show in chapter 11 how the positive principle of freedom of conscience arose from the initially negative concept of toleration, and how 'freedom of conscience' became a powerful symbol – a development which has immediate bearing on the value attached to the principle of freedom of conscience today.

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<sup>119</sup> Plamenatz (1963), 49.

<sup>120</sup> *Idem*.

## 11. Between idealism and pragmatism

“It is by the goodness of God that in our country we have those three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practice either.”

MARK TWAIN, *Following the Equator*, ch. 20: “Pudd’nhead Wilson’s New Calendar” (1897)

### 11.1. INTRODUCTION

I noted in the previous chapter that in this part of the book the emphasis shifts to social and political reality. This is particularly true for section 11.2. Having dealt in the previous chapter with the problem of order in its two dimensions, I will here turn to the dynamics of order; that is, to the dynamic interplay between practices of persecution and toleration on the one hand, and concepts of heresy, toleration, and freedom of conscience on the other; between historical circumstances, and skeptical thought, relativism, and arguments from expediency. What I call ‘Zagorin’s question’, a question anticipated in 10.2, will be explicitly discussed in 11.2.2: were skepticism and expediency enough to bring about a lasting regime of religious toleration? Zagorin answers this question in the negative, and places great emphasis on the importance of *ideas*. He writes an intellectual history of religious toleration.<sup>1</sup> I attempt to arrive at a more nuanced conclusion.

In the transition to part II, I distinguished between a religious notion of freedom of conscience and a political-juridical one. The first is the Lutheran/Calvinian notion of Christian freedom; the second is the ‘secular’ notion of freedom of conscience that is not *in principle* (though often in practice) reserved for one particular religious group. It is from the latter notion of freedom of conscience – the one that arose from the dynamic discussed in 11.2 – that our present notion derives most directly (assuming that ‘we’ have only one such notion). Freedom of conscience is something quite different from religious toleration. The latter, however, developed from a pragmatic policy into a valued principle, and hence underlies the principle of freedom of conscience. From the seventeenth century on, the notion of freedom of conscience became clothed in the terminology of (human) rights. This is how we speak of it today. The *Universal Declaration of Human Rights* states that “[e]veryone has the right to freedom of thought, conscience and religion”. Not only in Western countries is this declaration seen as of fundamental value. Western countries, however, see the human rights discourse as the product of their Enlightenment; it is something they take pride in. Freedom of conscience, in conjunction with freedom of thought and religion and freedom of speech and expression, is gladly taken as a

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<sup>1</sup> Zagorin (2003).

symbol (perhaps *the* symbol) of Western (European and American) civilization. The question of 11.3 is: how did freedom of conscience become such a powerful, suasive symbol?

## 11.2. DYNAMICS OF ORDER: BETWEEN IDEALISM AND PRAGMATISM

Having dealt, in the previous chapter, on a rather abstract theoretical level with what I take to be the fundamental issue with regard to freedom of conscience, namely the problem of order in its two dimensions, I will continue here with a discussion of more concrete matters – what I will call the dynamics of order. I will still be concerned with conceptual matters – when does the concept of toleration arise and how does it develop? how does it relate to the concept of heresy? how did toleration develop into liberty of conscience? – but these will be discussed in close relation to historical practices (of toleration, of persecution) and circumstances. The idea behind this is that the best way to come to understand arguments is to see them in action. I will pay ample attention to the question of what, historically, provided the necessary support for the secular principle of freedom of conscience. Candidates for this function are also still candidates for providing the best *theoretical* support for toleration, as is shown by McKinnon, who provides a very insightful and much more thorough systematic discussion of the concept of toleration than I can provide here (and than I have chosen to provide, giving precedence to a historical-systematic approach, rather than to a purely systematic one).

### 11.2.1. Toleration, heresy, and persecution

Although it will not surprise people to find a lot of talk about toleration in a text on freedom of conscience, few authors today would agree with Reverend Murray, who spoke of “the problem of toleration, which is the problem of conscience”.<sup>2</sup> Toleration is not the same as allowing freedom of conscience (in whatever sense of the term), although in practice it may turn out the same.<sup>3</sup> One can tolerate (or not tolerate) behaviour that has no particular grounds in anybody’s conscience. People who are the object of toleration may not appeal to conscience. Finally, there is a kind of freedom of conscience that hardly requires any toleration, except a refraining from inquisition – freedom of conscience is then understood as a completely internal matter; a freedom of thought, not action. That the problem of toleration is not identical with that of conscience does not mean that they are not related. Both in practice and thought, the latter is more or less an extension of the former. In some periods more than in others, the

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<sup>2</sup> Murray (1929), 59.

<sup>3</sup> Plamenatz (1963) repeatedly insists on the difference, though also on their intimate relatedness; see, for instance, 52, 66 and 77.

terminologies of the debates intermingle. It is partly because of the increasing emphasis on the sanctity of the individual conscience that toleration develops from a negative notion referring to a limited practice into a valued principle the ‘possession’ of which tickles the vanity of Western nations. There is enough reason, then, to devote some time to a discussion of the concept and the practice of toleration.

The notion of toleration has been defined in many ways. A useful definition is provided by Johannes Kühn, and quoted by Guggisberg: “Toleranz ist Ertragen und – positiver ausgedrückt – Geltenlassen des Anderen.”<sup>4</sup> In keeping with the etymology of the term, the negative notion of toleration is primary. William Huseman wrote an enlightening article in this connection. Using five French sixteenth century polemical treatises as his sources, he demonstrates that those in favour of toleration tended to avoid the term ‘toleration’ and other terms belonging to the same ‘family’, and use terms like ‘permettre’ instead. Opponents of toleration on the other hand, made ample use of the term and its negative connotations. ‘Tolérer’ referred to a passive attitude of the government, allowing the evil to spread. ‘Permettre’ signified a more positive, active attitude; it was also, in contrast with ‘tolérer’, a legalistic term, which for this reason was favoured by “those living in illegality”.<sup>5</sup> The big question is: how did ‘toleration’ turn from a “temporary measure based on expediency” into a positive general principle?<sup>6</sup> If I may venture a guess, I would suggest that, given the fact that ‘tolérer’ indicated a passive stance of the government, perhaps the term became more in use among advocates of a separation of church and state; that is, of the state not interfering in religious matters.<sup>7</sup> This way, the more recent and more positive meaning of ‘toleration’ would link up with the older, pejorative notion. The advent of the positive notion of toleration does indeed coincide with a gradual separation of church and state. Nevertheless, this remains a speculation, as yet unsupported by the appropriate research.

Toleration in its most idealistic form, on a par with principles like freedom of conscience and freedom of speech, may be a relative novelty in

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<sup>4</sup> Johannes Kühn, “Das Geschichtsproblem der Toleranz”, in: *Autour de Michel Servet et de Sébastien Castellion*, Recueil publié sous la direction de B. Becker, Haarlem, 1953, 3, quoted in Guggisberg (1984), 9. [“Toleration is to endure (the presence of) others and – more positively put – to let them assert themselves.”] The English word ‘tolerance’ seems closer to the German ‘Toleranz’, but ‘toleration’ is the narrower term, more specifically focused on this context.

<sup>5</sup> Huseman (1984).

<sup>6</sup> *Ibid.*, 309-310.

<sup>7</sup> The negative notion of toleration indicates a passivity of the state towards something very evil. For this passivity to become looked upon as something commendable, the perception of this evil would also have to change. Dees’ article “Trust and the Rationality of Toleration” – I have referred to it before – suggests how this may have happened, but I will come back to that later.



history, but the practice of toleration in a more limited sense certainly is not. Early Christians – a convenient, not a necessary point of departure – had to struggle to be tolerated. Three centuries later, Christians were themselves in a position to tolerate – and chose not to. Some passages of importance throughout the history of toleration debates can be found in the New Testament. In Paul’s letter to the Corinthians, he speaks of Christians with weak and with strong consciences.<sup>8</sup> Those with a weak conscience are the just-converted, who still have scruples about eating meat that was offered to the Gods, even though they know those Gods do not exist. For the sake of their weak brothers, those with a stronger conscience should, when they dine together, also refrain from eating the meat offered to the Gods – for conscience sake; not their own, but that of the weaker brothers.<sup>9</sup> This tolerant – even *more* than tolerant – attitude is not uniformly expressed throughout the New Testament. Also in Corinthians, Paul says to the Christians there: “when ye come together in church, I hear that there be divisions [*schismata*] among you” and further on: “there must also be heresies [*haireseis*] among you”.<sup>10</sup> Perez Zagorin points out some other places in the New Testament where there is talk of ‘(damnable) heresies’ and ‘divisions’. These terms are often associated, which shows the importance that was attached to the unity of the early church. Choice, which is the literal meaning of ‘haireisis’, was not an option for early Christians.<sup>11</sup>

“Imperial Rome,” Zagorin notes, “was tolerant in practice in permitting the existence of many diverse religious cults, provided their votaries also complied with the worship of the divine emperor as part of the state religion.”<sup>12</sup> Again, we see how the attitude towards religious pluralism depends on whether it is seen as a threat to political order. With respect to the Roman demand of participation in the imperial cult, Christians responded with a *nolle prosequi*. Hence, in the first three and a half centuries, Christians were persecuted with different degrees of intensity.<sup>13</sup> While they tried to subdue heresies amidst their own ranks, they also tried to gain recognition of their freedom of religion. Zagorin points out that the Christian theologian Tertullian (living in the later second and early third century) held the opinion that heretics could not be Christians, and at the

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<sup>8</sup> See chapter 2.

<sup>9</sup> 1 Corinthians 10:27. See, for example, Lecler (1977), 333.

<sup>10</sup> 1 Corinthians 11:18-19, quoted in: Zagorin (2003), 18.

<sup>11</sup> Zagorin (2003), 18-19.

<sup>12</sup> *Ibid.*, 4.

<sup>13</sup> The Jews also refrained from participation in the imperial cult, but according to Zagorin their religion was respected because of its age, and seen as less hostile towards Roman religion. Jewish priests, moreover, offered prayers for the emperor in the Temple at Jerusalem (Zagorin [2003], 5).

same time, while insisting on the truth of Christianity, opposed compulsion in religion and spoke out for 'libertas religionis'.<sup>14</sup>

In 311, the Roman emperor Constantine became by his conversion the first Christian emperor. In 313, the *Edict of Milan* granted the freedom to choose one's religion. The Christian hold on the empire increased gradually. In 356, the death penalty was proscribed against those worshipping idols. In 380, Christianity officially became the sole state religion under Theodosius. A prohibition against honouring household gods was issued in 392, followed in 395 by a prohibition against walking around pagan temples. In 435 it was ordered, on pain of death, that pagan temples still standing were to be demolished.<sup>15</sup> This inversion of the state of affairs, by which Christians turned from persecuted into persecutors, coincided with a change of attitude in the work of St. Augustine (354-430). Himself at first a Manichaean, he experienced a conversion and was baptized in 387. Since then he wrote against Manichaeism, Pelagianism and Donatism. The Donatists, Zagorin says, "formed a schismatic and rival church with its own clergy".<sup>16</sup> Augustine kept trying to refute heretical doctrines and to persuade their adherents to (re)join the Catholic Church. In letters addressed to Donatists, Augustine emphasizes the voluntariness with which the true faith was to be accepted. Around the turn of the century, Augustine changed his mind and began to write in favour of coercion.<sup>17</sup> He kept insisting on the voluntary acceptance of faith, but thought it desirable in some cases to bring people in the right position for this voluntary acceptance of faith. This could entail the use of force. If fear could help reduce the influence of false doctrines, then intimidation was a legitimate means of getting people to change their minds.

It would be too easy to attribute Augustine's change of heart entirely to the changed position of the church. Augustine's concern lay with the salvation of individual souls.<sup>18</sup> If violent means were necessary to accomplish this salvation, then so be it. Augustine himself said that he changed his position because he had seen Donatists "converted to Catholic unity by the fear of imperial laws", who were now grateful for their violent conversion.<sup>19</sup> He supported his position with references to the Bible, in particular to the parable of the feast in Luke 14:21-23, (where a man who had organized a feast, on finding that none of the people he had invited shows up, orders his

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<sup>14</sup> Ibid., 21.

<sup>15</sup> Poulat (1989), 76-77.

<sup>16</sup> Zagorin (2003), 26.

<sup>17</sup> Cf. Plamenatz (1963), 76, on the post-Reformation period: "It is (...) important to notice that the attitudes of the different Churches to toleration and liberty of conscience depended almost entirely on their relative sizes and hopes of predominance."

<sup>18</sup> Cf. Plamenatz (1963), 70, on the conscientious persecutor.

<sup>19</sup> St. Augustine, *Letters*, 5 vols., Fathers of the Church, New York, 1951, Vol. 2, 73-74 (letter 93 to Vincent), quoted in: Zagorin (2003), 27-28.

servants to go out and bring back all the poor, the blind and the lame they can find and “compel them to come in”), and the parable of the wheat and the tares in Matthew 13:24-30, of which Augustine gives a somewhat curious interpretation, that would later be repeated by Thomas Aquinas. The wheat in the parable is equated with good Christians; the tares, naturally, are heretics. The question is whether the tares should be uprooted before the harvest, that is: before the Last Judgement. The point of the parable appears to be that one should not uproot the tares, because one might harm the grain in doing it, and leave the judgement to God. Augustine reverses the parable’s meaning and states that it means that one can uproot the tares if one is able to recognize them, and if there is no risk of uprooting the wheat with them.<sup>20</sup>

Christian authors occupied themselves with the problem of heresy from the beginning. It is important to note, however, that not every divergence from Christian doctrine counted as such. Heresy was defined in the thirteenth century by Robert Grosseteste as “an opinion chosen by human faculties, contrary to Holy Scripture, openly taught and pertinaciously defended”.<sup>21</sup> Jews and Muslims (dangerous as they were) were not regarded as heretics, because they were born as Jews or Muslims; they had not *chosen* to stray from the true faith, like heretics. Heretics had been baptized, but chose to turn away from the church. As such, they were a much greater threat to the unity and stability of the religious community, which accounts for the (even) greater degree of intolerance suffered by heretics in comparison to Jews and Muslims. The definition offered by Grosseteste can also serve to explain why all kinds of pagan beliefs and practices survived throughout the Middle Ages. They did not have the articulate character of *opinions*, and were not usually ‘openly taught and pertinaciously defended’; they were simply part of everyday life and therefore *openly* but not *conspicuously* present. These pagan beliefs generally did not assert themselves aggressively, nor did they turn against the Christian faith, offering themselves as an alternative. The church (in the form of local priests) often responded to the old pagan traditions with mild attempts to subdue them, but more importantly with a policy of transformation and integration. Elements of pagan beliefs and practices that could not be eradicated were given a new, Christian meaning.<sup>22</sup> Parish priests had to allow that “[t]he churchyard was the place for games and sports; even such holidays as contained considerable

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<sup>20</sup> Zagorin (2003), 28-29. The ‘compelle intrare’ of Luke 14 would also become a returning element in toleration debates.

<sup>21</sup> Ibid., 40.

<sup>22</sup> See, for instance, Wessels (1994). Wessels points out that there were two attitudes towards existing religions, one represented by the missionary Bonifatius, who wanted to eradicate everything that was not Christian, the other by Pope Gregory I the Great, who favoured a policy of saving anything that was not directly contrary to Christian faith. See also Künzel (1986), and Van Deursen (1986).

pagan elements were celebrated here...<sup>23</sup> Finally, there was a considerable interest in magic – not just the natural magic of herbs – among both worldly and spiritual dignitaries. Thomas à Becket, for instance, regularly consulted soothsayers.<sup>24</sup>

Heresy was considered to be much worse than the mere continuation of pagan tradition (in a Christian guise or not) by the uneducated. The old heresies Augustine faced had been subdued in the early Middle Ages; the problem returned in (roughly) the twelfth century, with the emergence of a new spirituality. St. Francis, for example, trying to model his way of life after that of Christ and the apostles, represented an anti-materialist religious movement (a devotional movement, as they are often called) with strong mystic overtones. He came close to being condemned as a heretic. The greatest threat for the church, at least in its own perception, came in the form of the ‘new Manichaeism’ of the ‘Great Heresy’ of the Cathars, a movement that was especially strong in France, where they were also known as ‘Bulgares’, ‘bogri’, ‘bugres’ and ‘bougres’ – the latter term becoming an equivalent of ‘heretics’.<sup>25</sup> Cathars, ‘the pure’, challenged Catholic religious doctrines. As Stoyanov says, they “shared with reformist sectarians [like St. Francis, AS] the pursuit of apostolic life, piety and asceticism coupled with opposition to the church hierarchy, which was deemed to have abandoned the apostolic traditions”.<sup>26</sup> What the Cathars did not share with other reformists was the dualism to which they owed their reputation as ‘new Manichaeans’. With their view of the universe as a battleground for the opposed forces of Good and Evil (whether given Christian names or not), the Cathars reminded the established church of its old enemy, Manichaeism. To counter the threat posed by the Great Heresy, the church ‘founded’ (this term is an overstatement, as Zagorin points out<sup>27</sup>) the Inquisition, which would become an increasingly powerful instrument and also an increasingly autonomous institution. Members of the Inquisition had the power and the mandate to question people using all conceivable methods of interrogation. If found guilty, a victim of the Inquisition that would not confess to the error of his or her ways was handed over to the worldly authorities to be executed. The Inquisition could force unwilling government officials to cooperate by threatening them with excommunication. The later Middle Ages were a time of increasing theoretical dogmatism and practical intolerance, and it is worth noticing, as

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<sup>23</sup> Gurevich (1997), 79.

<sup>24</sup> Hattinga van ’t Sant (1988), 159-160.

<sup>25</sup> Stoyanov (1994), xvii. The terms ‘Bulgares’, ‘bougres’, et cetera, refer to the mainly Bulgarian origin of Bogimilism, a form of ‘new Manichaeism’ which by the thirteenth century had spread to Western Europe, and which resembled and influenced Catharism.

<sup>26</sup> *Ibid.*, 1. The Dutch word for ‘heretics’, ‘ketter’, derives from ‘Cathars’.

<sup>27</sup> Zagorin (2003), 41.

Zagorin does, that the hatred of Catholics towards heretics was returned (though unbacked by power) by those heretics, who saw themselves as ‘sheep in the midst of wolves’. As Zagorin says, “[t]here is no reason to think that heretics were more tolerant than their persecutors”.<sup>28</sup>

The issue of toleration came to its full poignancy when the church was confronted with the reality of an ineradicable religious pluralism.<sup>29</sup> To bring about a situation of religious pluralism, however, was never the intention of Luther and other reformers. The word ‘Reformation’ itself shows what the movement intended.<sup>30</sup> Luther hoped that the church would mend its ways and return to a pre-corrupted state. Things turned out rather differently. The church faced a new division (after the schism of 1054 that was also, conveniently perhaps, a territorial schism): there were now Catholic churches *and* Protestant churches. Catholics and Protestants were equally intolerant towards each other; they did not agree to differ, but they agreed on one thing: that the other party was wrong. Lecler notes that in 1525 Luther denounced the conscience of the capitulars of Altenburg, who appealed to their conscience to retain the right to celebrate mass, as “*erdichtetes Gewissen*”: fictional or fictitious conscience. Luther would recognize only one argument, which was a justification of their conscience by appeal to the Bible.<sup>31</sup> This is an important thing to notice, because it shows the preoccupation with certainty that was typical of the period. Luther wanted their arguments to have a solid and certain foundation: the Bible. Moreover, he thought that everyone who would take the trouble to read the Bible carefully would come to the same conclusions. The doctrinalization that occurred in the scholastic period had been indicative of an attempt to pinpoint the meaning of things and words. In the same period, the meanings of ‘literal’ and ‘figurative’ reading were transformed and a great emphasis came to lie on the ‘literal’ meaning of texts in its new sense (the modern sense) of the word. The late Middle Ages also saw the beginnings of modern natural science. All these developments are indicative of a climate of thought

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<sup>28</sup> *Ibid.*, 36.

<sup>29</sup> On a more academic level, pluralism had already replaced a metaphysical ‘community of assumptions’, as Gordon Leff points out. The breakdown of this community of assumptions occurred in the fourteenth century, though it was prepared in the thirteenth. Leff also remarks, interestingly, that “the so-called Latin Averroists in the 1260s and 1270s, before their condemnation in 1277, was a more direct challenge to a Christian outlook than anything in the fourteenth century. The Latin Averroists, however, represented the negation of a Christian framework at all, hence their suppression. The re-orientation that came with the fourteenth century on the other hand was precisely through redefining that framework above all in its foundations of being, knowledge, and belief.” (Leff [1976], 9.)

<sup>30</sup> ‘Reformation’ is a sixteenth century label for the movement, though not a label devised in advance, of course.

<sup>31</sup> Lecler (1977), 346.

that must be characterized as increasingly rigid and preoccupied with a new kind of certainty; not the certainty of faith that persisted despite the human inability to understand what was divine, but a certainty of human understanding.<sup>32</sup> On a political level, this climate of thought appeared in the form of more and more desperate attempts to retain control, including a control over the minds of men, for which the Inquisition was called into existence.

Luther was not a tolerant man, nor did he ask for tolerance; he wanted to *reform*. The freedom of conscience he promised to true Christians may remind us of its Stoic precursor. The Stoics thought that one should follow conscience (to say ‘one’s conscience’ would be an anachronism), but this had no political or juridical implications. Their concern lay with man’s interior, with spiritual freedom, undisturbed by external circumstances.<sup>33</sup> Similarly, Luther’s Christian freedom was also primarily a freedom *despite* the circumstances. The first arguments for toleration, therefore, did not come from the side of the reformers, but from humanist scholars. Nicholas of Cusa (1401-1464), whose thought also contains mystic elements, is an early example. He suggested in *De Pace Fidei* that all religions in essence come down to the same thing, which is clearly a basis for tolerance. Other mystics or humanists that pleaded for tolerance include Sebastian Franck (1499-1542) and Dirck Volckertsz. Coornhert (1522-1590). Perhaps the best known advocate of toleration – Zagorin calls him ‘the first champion of religious toleration’ – is Sebastian Castellio (1515-1563), author of *De Haereticis, an sint Persequendi*.<sup>34</sup> In the arguments for toleration of these last three authors (as well as in many anonymous pamphlets and writings of lesser known authors from the same period), the phrase ‘forcing the conscience’ (‘forcer les

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<sup>32</sup> See Nelson (1969), 12: “Different and even contradictory as they were in many of their views and motivations, there is one critical sense in which the pioneers of the Reformation and the pioneers of the scientific revolution were at one. All – Luther, Calvin, Galileo, Descartes, Pascal – attacked the late medieval casuistry of conscience and probabilism of opinion at their very roots. Moreover, their attacks against every shade and grade of conjecturalism, fictionalism, and probabilism were put forward in the name of subjective certitude and objective certainty.” About the rejection of probabilism, see also Rose (1975), chapter 6, especially 72-73. Of course, this is only one aspect of the new science, which could also be approached from the perspective of adventurousness. In a sense, Reformers and scientists shared a certain boldness as well, and both had great confidence in their own ability to know the truth for themselves. As Nelson points out, subjective certitude and (a claim to) objective certainty went hand in hand. Reformers and scientists both threw off a certain kind of humility and a reverence for authority and tradition.

<sup>33</sup> See chapter 2.

<sup>34</sup> *De Haereticis (Concerning Heretics, and whether They Should be Persecuted)* was published in 1554. See Zagorin (2003), chapter 4.

consciences' / 'das Gewissen zwingen') plays an important role.<sup>35</sup> It is repeatedly said that 'the conscience should not be forced with the sword'. Coornhert says: "Die ware leeraren en ghebruycken (...) gheen sichtbare wapenen (...) gheen menschen, maar Godes wapenen. T'is gheen vleeschelijck, maar een gheestelijck swaart."<sup>36</sup> There is a strange paradox in the way this argument is put forward in different places. Sometimes it is said that the conscience *should* not be forced; sometimes, on the other hand, it is said that the nature of conscience is such that it *cannot* be forced.<sup>37</sup> These are very different statements, and the ambiguity that comes to light in their co-occurrence seems to be indicative of a transformation of the concept of conscience that lay behind them. To say that the conscience *cannot* be forced, indicates that one sees conscience as something purely spiritual, untouched by external circumstances, but also without relevance to them. The other argument implies that conscience *could* be forced, and therefore either that its being extends beyond the boundaries of the individual's mind, or that the mind can be manipulated from the outside. The latter notion of conscience is the one that lies at the basis of political-judicial notions of freedom of conscience; the former is implied in the Lutheran and Calvinian notion of freedom of conscience.<sup>38</sup>

The present subsection started with toleration. With the above considerations we have ended up at notions of freedom of conscience. That means that toleration turned from a negative into a positive principle. How was this principle supported, and how could it be sustained in practice? That is the subject of the following subsection.

### 11.2.2. Zagorin's question

Authors on toleration disagree about whom or what to thank for (or to blame for, if you wish) the modern Western regime of tolerance (supposing that this does indeed exist). It is not very fashionable at the moment to give all the credit to the Protestant Reformation. More emphasis is laid on less idealistic factors, though the hardcore pragmatists are also already under fire. This debate is also a debate about method. Heiko Oberman criticizes Joseph

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<sup>35</sup> Lecler (1977), 348-351; Vermeulen (1989), 48-49.

<sup>36</sup> Vermeulen (1989), 49. [The true teachers do not use (...) visible weapons (...) not human, but divine weapons. It is not a bodily, but a spiritual sword.]

<sup>37</sup> Michel de L'Hospital claims this, for instance. See Lecler (1977), 350.

<sup>38</sup> It is possible that the argument that conscience cannot be forced was at least sometimes intended to make a conceptual point: force is irreconcilable with the nature of conscience. Insofar as it was an empirical statement, it lacks a certain realism. There are many things one can do to manipulate another's conscience, and there are also many ways to manipulate one's own (either consciously or unconsciously). On the other hand, history furnishes us with a number of examples of people who were so strong that their conscience could indeed not be forced, nor their will broken. In such cases, force may affect the body, but not the mind.

Lecler and his followers for writing too much of an intellectual history, for focusing on “tracts and treatises, on publishers and printers”.<sup>39</sup> Herbert Butterfield quotes W. K. Jordan, who wrote as early as 1940: “The historian of ideas (...) must ever realise that a dozen works written in the heat of the controversy, or a score of pamphlets indited by sectaries gripped by a blinding fear, may not, despite their blinding intensity, be so significant as indices of the nature of cultural change as the cold verdict of a judge on assize, the casual quip of a Pepys, or the blunt observation of the squire to his lady.”<sup>40</sup> Oberman replaces an intellectual by a social history of ideas, using as a heuristic axiom “that the limits of tolerance can best be measured on the margins of society”.<sup>41</sup> The real idealists in this debate (or these debates) are found among the writers of intellectual history, but we cannot turn this around: writers of intellectual history are not always idealists. Lecler and Guggisberg, for instance, lean towards the pragmatic side. One of the most recent works on the subject is Perez Zagorin’s *How the Idea of Religious Toleration Came to the West* – which title already betrays something of where Zagorin stands. He wishes to defend the importance of ideas against that of more material factors in explanations of the origin of enduring religious toleration. Political expediency may bring about “a regime of coexistence between Catholics and Protestants”, but without the backing of “religious, philosophical, moral and humanitarian arguments” supporting and justifying toleration, the coexistence will not last. “In the absence of convincing reasons showing why toleration is right and desirable, the institutional accommodation and the change in individual and social values needed to establish it could hardly occur.”<sup>42</sup>

The previous subsection ended with a discussion of arguments concerning the ‘forcing’ of conscience. But the argument against the forcing of conscience is only one among several principled arguments for toleration. Vermeulen distinguishes two other arguments. The first is the old argument that faith can only be accepted voluntarily. The second centres round the idea of the value and dignity of the private conscience – this argument, Vermeulen says, is at the basis of the formulation of freedom of conscience as a human right.<sup>43</sup> It has to be joined by a certain amount of *truth-relativism*, however, to become effective. For Castellio, Coornhert, Locke and Bayle (1647-1706), it is clear that no human being can authoritatively lay claim to

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<sup>39</sup> Oberman (1996), 13.

<sup>40</sup> W. K. Jordan, *The Development of Toleration in England, 1640-1660*, Allen & Unwin, London, 1940, II, 469, quoted in Butterfield (1977), 582.

<sup>41</sup> Oberman (1996), 29.

<sup>42</sup> Zagorin (2003), 12-13.

<sup>43</sup> We have seen that Plamenatz identifies other grounds for the idea of liberty of conscience as a natural right.



an absolute truth.<sup>44</sup> Sebastian Franck thought that the ideas of heretics were always one-sidedly presented; even heretics must have held part of the truth.<sup>45</sup> I will come back to the issue of relativism later; at this moment, it is enough to know *that* it was there, for now we can turn to the question Zagorin answered in the negative: were skepticism and expediency enough to bring about a lasting regime of religious toleration? I will not repeat the arguments from expediency here, since they have been discussed in 10.1; I have not said anything about skepticism, however, so I will shortly look into that. Undoubtedly the most famous skeptic after the Classical period is Michel de Montaigne. His skepticism with regard to conscience is evident from various passages. In his essay “Of Repentance”, he says:

“Be pleased here to excuse what I often repeat, that I very rarely repent, and that my conscience is satisfied with itself, not as the conscience of an angel, or that of a horse, but as the conscience of a man, always adding this clause, not one of ceremony, but a true and real submission, that I speak inquiring and doubting, purely and simply referring myself to the common and accepted beliefs for the resolution.”<sup>46</sup>

A bit further on, he states:

“We, who live private lives, not exposed to any other view than our own, ought chiefly to have settled a pattern within ourselves by which to try our actions; and according to that, sometimes to encourage and sometimes to correct ourselves. I have my laws and my judicature to judge of myself, and apply myself more to these than to any other rules: I do, indeed, restrain my actions according to others; but extend them not by any other rule than my own.”<sup>47</sup>

The most telling passage, however, is this one:

“The laws of conscience, which we pretend to be derived from nature, proceed from custom; every one, having an inward veneration for the opinions and manners approved and received amongst his own people,

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<sup>44</sup> Vermeulen (1989), 52. Such arguments have a long history. Even in a work like the *Summa on Ecclesiastical Power* by Augustine of Ancona, of which the general tendency is to underscore the inviolable power and authority of the pope, some room is left for a situation in which the pope might be deposed. Furthermore, Augustine of Ancona (1270/1273-1328) agrees to the thought that “to judge consciences is not permitted to the pope or any man whatever in the present life” – he replies, however, by saying that the pope does not judge inner consciences, but outer deeds. See Augustine of Ancona (2001), 469 and 471.

<sup>45</sup> Guggisberg (1977), 85.

<sup>46</sup> Montaigne (1877), Book III, chapter II: “Of Repentance”.

<sup>47</sup> Idem.

cannot, without very great reluctance, depart from them, nor apply himself to them without applause.”<sup>48</sup>

Montaigne is skeptical of an objectivistic view of conscience. He rejects the idea that conscience is a (divine) medium of truth. Instead, he sees conscience as private and subjective, and dependent on socialization and custom.<sup>49</sup> Hobbes and Locke share this view of conscience.<sup>50</sup> From the fifteenth century on, (moral) skepticism became an important element of the intellectual climate, due to people like Niccolo Machiavelli (1469-1527), Michel de Montaigne, Thomas Hobbes and John Locke. Moral skepticism followed primarily from a recognition of man’s partiality towards himself (and those near and dear to him) and the role of the emotions in moral behaviour and judgement – a recognition that is most explicit in the works of David Hume (1711-1776).<sup>51</sup> Perhaps the most succinct expression of moral skepticism or moral relativism is Locke’s remark that “everyone is orthodox to himself”.<sup>52</sup>

Though relativism and skepticism are not the same thing, they certainly belonged to the same climate of thought, and to the same aspect of that climate. If skepticism does not take its most radical form, and instead of denying that there is such a thing as truth halts at the stage of doubt about ever finding the truth, it may come down to a certain form of relativism – a form that says that everyone tries, in his own way, to get at the truth, and that none of us is in a position to judge, ultimately, whose quest is successful and whose in vain. A radical form of relativism may entail the thought that ‘everyone has his own truth’ and that there is no truth beyond that – such a relativism comes down to more than a mild form of skepticism. So I will not distinguish between the two here, and treat moral relativism and moral skepticism at a par – they fulfil the same function in the advent of toleration and freedom of conscience.

Before we are in a position to answer ‘Zagorin’s question’, we should take a look at Richard Dees’ article “Trust and the Rationality of Toleration”. He shows that toleration was not simply a (or *the*) rational response to centuries of religious conflict. Dees argues that at the height of these conflicts, toleration was not rationally required at all. In fact, it was

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<sup>48</sup> *Ibid.*, Book I, chapter XXII: “Of Custom”.

<sup>49</sup> Which means that private consciences will tend to have more in common, the more they are formed in the same environment.

<sup>50</sup> Though Hobbes on occasion pines for the old conception of conscience as knowledge shared with others and seems to see this as the real meaning of ‘conscience’, and Locke exhibits a much less skeptical view of conscience in his more popular works. See chapter 4.

<sup>51</sup> On the recognition of man’s partiality in Hobbes and especially Locke, see Dunn (1991), 176-177.

<sup>52</sup> Locke (1968), 59.

rational for both Catholics and Protestants to *distrust* each other. Because toleration makes us vulnerable to others, it requires at least a minimum of trust. “Trust, however, is rational only if we can reasonably expect to gain something from it – or at least, if we do not have to sacrifice too much for it.”<sup>53</sup> In sixteenth-century France, it was rational for Huguenots *not* to trust Catholics, and the other way around, because it was very likely that the other party would betray that trust. Advocates of the ‘rationality-thesis’ (to give a name to the idea that toleration was the rational response to a long period of religious strife and violence) might say that intolerance was irrational, given the costs of it: all the suffering that the wars caused. But Dees points out that for both parties, eternal salvation was at stake; they were fighting for their souls, as well as for those of others. Dees concludes: “[I]f we take their religious beliefs and values seriously and if we recognize that they believed that salvation itself was at issue, their willingness to endure war does not seem irrational at all.”<sup>54</sup> Another reason why Catholics were not irrational to reject toleration of Huguenots is that they saw salvation as a collective good, and the church as providing the social bond of the community. There could not, in their view, be more than one religion in a state. Given the goals of both parties, distrust and intolerance were rational responses to the situation. What was needed to establish a minimum of trust and, on that basis, toleration, was a *moral conversion*. Dees speaks of a ‘conversion’ “to emphasize the essential role played by non-rational and merely causal factors”; “it is not the result of what people *do*, but of what happens *to them*.”<sup>55</sup> Dees argues that *battle fatigue* “changed the dynamics for trust”.<sup>56</sup> The incessant conflicts changed people’s evaluation of the benefits of intolerance, and of the importance of fighting for eternal salvation. The circumstances led to a reevaluation of principles and beliefs. Perhaps eternal salvation came to appear as a rather distant prospect to endure so much for on this earth. In any case, the scales of the costs and benefits of trust and distrust turned. The government enabled the beginning of toleration by stepping back from religion, thereby assigning to itself and to religion separate spheres. The state found a way of securing its own power without the unifying element of a state religion – the separation of church and state was a separation of interests.

‘Zagorin’s question’ is the name I gave to the question of whether skepticism and expediency (either alone or together) were enough to bring about a stable regime of coexistence between different religious groups. Zagorin’s answer was a clear no; he states that toleration may arise from expediency, but to last stands in need of principled support – the support of

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<sup>53</sup> Dees (1998), 83.

<sup>54</sup> *Ibid.*, 85.

<sup>55</sup> *Ibid.*, 91.

<sup>56</sup> *Ibid.*, 92.

the ideas of Castelleo, Locke and others. Zagorin, therefore, focuses on *ideas* in his work on religious toleration; he stands in the tradition of intellectual history. It seems to me that, though Zagorin's argument is not incorrect, it would be better, instead of emphasizing the importance of one factor at the cost of another, to point out the interwovenness of the different factors at work. Zagorin provides two examples to demonstrate that expediency without the support of the proper ideas (or ideals) could not bring about a lasting peaceful coexistence: the Peace of Augsburg (1555) and the Edict of Nantes (1598). The failure of the first attempt is evident from the Thirty Years War, starting in 1618; the revocation of the Edict of Nantes in 1685 testifies to the failure of the second attempt at peaceful coexistence. In fact, these examples can also be used to prove where Zagorin is wrong. They are examples of situations in which *ideas* (religious beliefs) still outweighed expediency, as well as arguments from expediency. More positively put, one might say that concern for the soul was still more important than economic and political interest, but this is again a half-truth, as concern for the soul and more worldly interest were not separate issues. So Zagorin's examples cannot serve to show that expediency was not enough; in fact, they demonstrate that there was not enough of the 'expediency-element' present to bring about lasting peaceful coexistence and toleration. As to skepticism – or, as Zagorin calls it: “the growth of religious indifference and unbelief” – we can say that Zagorin is right in noting that a skeptical attitude may also lead to indifference with regard to toleration.<sup>57</sup> In fact, however, skepticism played an important part in bringing about religious toleration. A certain degree of skepticism was a necessary element of the foundation of those idealistic arguments for toleration Zagorin attaches so much importance to. Many defenders of toleration out of principle held that no man could ultimately judge the truth of religious beliefs and that therefore no one could ever be justified in taking up arms against people adhering to different beliefs. A certain degree of skepticism, of truth-relativism, is at the basis of this defence of toleration. It is a crucial element in Locke's defence of toleration. Locke's idealistic argument that the state was not to interfere with the individual's religious worship also implies a certain relativism, because for Locke the care for the soul had become an exclusively private business. Every individual was to care for his or her soul in his or her own way, because no one could do this better *for* you.<sup>58</sup> No one, in Locke's view, had any authority with regard to what would be the best way to care for one's soul. Zagorin is right in emphasizing the importance of ideas, but we must

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<sup>57</sup> Another argument Zagorin advances against the idea that skepticism brought about peaceful coexistence is that its impact was “largely limited to intellectual elites and the educated” (Zagorin [2003], 9). It seems to me that this begs the question with regard to the elitist character of idealist defences of toleration.

<sup>58</sup> Recall Wolin's remarks on conscience and interest.

take the trouble to look carefully at what the ideas were that helped create a regime of tolerance. In fact, many of the important ideas, of the influential arguments, were arguments from expediency. I have already pointed out the importance of the economic argument. Henry Kamen spoke of religious liberty “as a concomitant of free trade” and stated that “toleration tended to increase in proportion to the decrease of dogmatic belief”.<sup>59</sup> Though they are somewhat cynically put, there is much truth in these remarks. The circumstances of the time go a long way in rendering intelligible why toleration came about, yet they were not uninterpreted circumstances. Political and economic expediency played a role also through arguments from expediency. Idealistic arguments are other indicators of the climate of thought and feeling in which toleration came to be regarded first as a necessary and temporary solution to pressing problems, and later as a valuable principle – they also show the influence of a new (or revived) element in thought: skepticism and relativism. Finally, it is important to see that the influence of arguments from expediency do not demonstrate that people all of a sudden saw the benefits and therefore the rationality of toleration, but instead indicate an important change in the beliefs and attitudes of individuals as well as governments. For the latter, a new perspective opened that provided religion with its own sphere; the former came to attach more importance to the things of this world – the shift expressed by Wolin as one from conscience to interest.

### 11.3. HOW ‘FREEDOM OF CONSCIENCE’ BECAME A POWERFUL SYMBOL

The ‘secular’ notion of freedom of conscience arose at a time when ‘toleration’ was starting to lose its negative connotations, and as a follow-up to the phrase of ‘not forcing the conscience’, which was used in pleas for toleration instead of that term itself. Though on the one hand it is true that ‘toleration’ has also become a valued principle, the term is still shunned by some. For some people it has always retained an ambiguous, if not foul, taste. Immanuel Kant (1724-1804), in *Was ist Aufklärung*, stated that his age was not yet an enlightened age, but an age of enlightenment; it was also the age of king Frederick, “Ein Fürst, der es seiner nicht unwürdig findet, zu sagen: daß er es für Pflicht halte, in Religionsdingen den Menschen nichts vorzuschreiben, sondern ihnen darin volle Freiheit zu lassen, der also selbst den hochmütigen Namen der **Toleranz** von sich ablehnt: ist selbst aufgeklärt, und verdient von der dankbaren Welt und Nachwelt als derjenige gepriesen zu werden, der zuerst das menschliche Geschlecht der Unmündigkeit, wenigstens von Seiten der Regierung, entschlug, und jedem frei ließ, sich in allem, was Gewissensangelegenheit ist, seiner eigenen

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<sup>59</sup> Henry Kamen, *The Rise of Toleration*, McGraw-Hill, New York, 1967, 240 and 55, quoted in: Oberman (1996), 13-14.

Vernunft zu bedienen.”<sup>60</sup> Kant preferred freedom to toleration. Similarly, Goethe stated: “Toleranz soll nur eine vorübergehende Gesinnung sein; sie muß zur Anerkennung führen. Dulden heißt beleidigen.”<sup>61</sup> For the Netherlands, toleration has become an identity-defining characteristic. The Dutch are considered to be tolerant by people all over the world, and they (or most of them) like to think of themselves as tolerant.<sup>62</sup> For Western countries in general, however, freedom of conscience is the more evocative term.

Paradoxically, our present secular notion of freedom of conscience, though historically more directly linked to the ‘secular’ notion of freedom of conscience that arose in the seventeenth century, in the wake of the toleration debates, owes an important part of its evocative power as a symbol to the radical religious conscience of English Puritans, and in the end, therefore, to the Lutheran and Calvinian notion of Christian freedom. In one phrase, the power of the symbol of freedom of conscience has its ground in a change from the idea that ‘conscience makes cowards of us all’ to the idea that ‘conscience makes heroes of us all’.<sup>63</sup> The conscience of the Saints did not make cowards of them (however much talk of the worm or the fire of conscience and of hell there may have been), but it *empowered* them. In seventeenth-century England, the Lutheran conscience became a revolutionary conscience. Andrew quotes from several authors to demonstrate the antinomian tendency of Puritan thought; John Reeve, for instance, stated: “Whosoever hath the divine light of faith in him, that man hath no need of man’s law to be his rule, but he is a law unto himself, and lives above all laws of mortal men, and yet obedient to all laws.”<sup>64</sup> Andrew summarizes the views of Laurence Clarkson: “swearing, drunkenness,

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<sup>60</sup> Kant (1968), 40. [“A prince who does not find it unworthy of himself to say that he holds it to be his duty to prescribe nothing to men in religious matters but to give them complete freedom while renouncing the haughty name of tolerance, is himself enlightened and deserves to be esteemed by the grateful world and posterity as the first, at least from the side of government, who divested the human race of its tutelage and left each man free to make use of his reason in matters of conscience.”] (Bold type in original. Translation from the Modern History Sourcebook, at <http://www.fordham.edu/halsall/mod/kant-whatis.html>.)

<sup>61</sup> [“Toleration should be merely a passing disposition; it must lead to recognition. To tolerate means to insult.”] Both the quotation from Kant and that from Goethe were mentioned by Frans Jacobs, on the aforementioned symposium on religious tolerance that was held in Nijmegen. Jacobs shares their view, and holds that ‘the language of toleration/tolerance’ should make way for the ‘language of respect’.

<sup>62</sup> Arguably, both factual tolerance and the extent to which the Dutch like to see themselves as tolerant have decreased somewhat in recent years.

<sup>63</sup> These are the titles of chapters 2 and 3 respectively, of Andrew (2001).

<sup>64</sup> Quoted by Andrew (2001), 31, from Christopher Hill, *Liberty against the Law: Some Seventeenth-Century Controversies*, Allen Lane, London, 1996, 219.

adultery, and theft were no more sinful than prayer and praise if the inner light informed the soul.” Clarkson wrote: “No matter what Scripture, Saints, or Churches say, if that within thee do not condemn thee, thou shall not be condemned.”<sup>65</sup> What these puritans claimed, was a freedom *for* their conscience. Andrew notes: “Enlightenment thinkers did not want freedom *for* conscience; that is, they did not favour the emancipation of intolerant certitude, religious zeal, and revolutionary intransigence. For them, freedom of conscience tended to mean sceptical tolerance, not an immunity or sanctity for conscience.”<sup>66</sup> In fact, it has been (and perhaps still is) crucial for the secular idea of freedom of conscience that conscience retains an aura of sanctity; the power of freedom of conscience as a symbol has part of its basis in a Protestant concept of conscience. Even if secular thinkers now attempt to replace this basis by the humanist idea of the dignity of man, one has to bear in mind that this itself has religious origins.

Of the Puritan champions of the rights of conscience, John Milton (1608-1674) receives the most attention in Andrew’s book. Perez Zagorin almost seems to portray Milton, with his advocacy of freedom of printing, freedom of speech, and (limited) freedom of conscience, as an enlightened thinker that is only hampered from realizing the Enlightenment ideals to the full by his Protestantism. Zagorin writes: “[H]is refusal to extend freedom to Catholicism, an oppressed religion in England, is explained by his Puritan background and the legacy of religious hatreds left by the Reformation conflict from which he was unable to emancipate his mind.”<sup>67</sup> Implicit in this remark, especially in the last part, seems to be the idea that freedom of conscience, in the end, is a product of Enlightenment thought. What Zagorin, unlike Andrew, fails to appreciate to the full is that Milton’s freedom of conscience is a Protestant (Puritan) notion of freedom of conscience, and that Milton’s pleas for toleration stem from his Puritan beliefs. Andrew notes that “for Milton, liberty of conscience means that ‘no true Protestant can persecute, or not tolerate his fellow Protestant, though dissenting from him in some opinions’.”<sup>68</sup> To Zagorin’s question (from an earlier text on Milton) why Milton did not assign the same freedom to the Catholic as to the Protestant conscience, Andrew suggests that “Milton perhaps would have replied that just as thought is a condition of freedom of thought, so the exercise of conscience is a condition of its liberty”. For Milton, “the rights of conscience correspond to its duties”, and on the latter

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<sup>65</sup> Andrew (2001), 31. He quotes Clarkson from Laurence Clarkson, *A Single Eye*, London, 1650, Thomason Tract E614, pp. A2, 9, 12.

<sup>66</sup> Andrew (2001), 179.

<sup>67</sup> Perez Zagorin (2003), 224.

<sup>68</sup> Andrew (2001), 61. He quotes from John Milton, *Complete Prose Works*, Yale University Press, New Haven, 1953-82, Vol. 7, 420-421. Milton advocated freedom of conscience in indifferent things, and toleration of those who agreed with his faith in essential matters. This excluded the Catholics.

level, the Catholics have failed. Milton thought the conscience of Catholics poorly developed; Catholics lacked character and “the self-command he thought essential to Christian liberty”.<sup>69</sup> Here, we encounter that same notion of self-command that figured so prominently in Smith’s *Theory of the Moral Sentiments*. It is not merely seen as a necessity and as a prerequisite for freedom of conscience – recall chapter 10, on the education of conscience as a solution to the problem of order – but it is also something both Milton and Smith take pride in. In Milton’s work, we see that freedom of conscience is bound up with a proud notion of conscience, which is both an achievement and the mark of a free agent. The religious idea of the sanctity of conscience was coloured, transformed even, by an activism that is the second element of Milton’s thought that stimulated the growth of freedom of conscience into a powerful symbol. Andrew speaks of Milton’s conscience as a ‘martial banner’ and states that “[t]he individualism of Milton’s championship of the rights of conscience became, through intolerant anti-popery, partisan collectivism. Individual conscience became partisan class consciousness.”<sup>70</sup> Milton makes use of the idea that underlies the humanist idea of the dignity of man when he says that “no man who knows ought, can be so stupid as to deny that all men naturally were born free, being the image and resemblance of God himself”.<sup>71</sup> Andrew concludes:

“In Milton’s writings we see how conscience has become heroic or revolutionary. (...) The voice of conscience replaced both custom and traditional authority; individual interpretation of Scripture empowered the weak to challenge their superiors in the social hierarchy. The dictates of conscience engendered zeal, discipline, and the duty to overthrow popery and prelacy. Liberty of conscience meant political as well as religious liberty (...). Conscience dictated the violent overthrow and repression of those who would deny freedom of conscience. Milton’s antinomian and partisan conscience was the banner of revolutionary republicanism.”<sup>72</sup>

Milton’s influence may have lain in Britain, on the Continent, too, it were not Enlightenment philosophers who most furthered the cause of freedom of conscience. Andrew points out, as I have noted before, that ‘the leading thinkers of the Enlightenment’ thought of freedom of conscience as ‘Hobbesian Erastianism’ rather than ‘Miltonian or Lockean separation of church and state’.<sup>73</sup> He goes on to point out that Voltaire, who “taught that the first law of nature was toleration”, combined this view with the idea that

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<sup>69</sup> Idem.

<sup>70</sup> Idem.

<sup>71</sup> Milton, Vol. 3, 198, in Andrew (2001), 61.

<sup>72</sup> Andrew (2001), 62. The paragraph is not free from overstatement, but it captures the general tendency of Milton’s thought and influence.

<sup>73</sup> Ibid., 117.



the prince should have full authority in ecclesiastical matters. Diderot, similarly, thought that the state should control religion in all its aspects.<sup>74</sup> The French revolution, especially in so far as it became a popular movement, with its battle cry of ‘Liberty, Equality, Fraternity’, was much more inspired by the thought of Rousseau than by that of clear-cut Enlightenment philosophers.<sup>75</sup> Robespierre and Saint-Just, members of the Committee of Public Safety in France after 1792, were, in Hampson’s words, ‘devotees of Rousseau’. Rousseau stressed the importance of an ‘Inner Voice’, a voice of nature that everyone has: “Whatever I feel to be right is right. Whatever I feel to be wrong is wrong. The conscience is the best of all casuists... Reason deceives us only too often and we have acquired the right to reject it only too well, but conscience never deceives.”<sup>76</sup> The voice of conscience was the voice of nature, a voice that people should learn to listen to even in their corrupted societal situation. This would lead them to understand how they should live together. In this ideal community, every individual would surrender himself and his private judgement to the collective, to the ‘volonté générale’. It was such a community that Robespierre and Saint-Just hoped to establish in France. The revolutionary potential as well as the popularity of Rousseau’s thought lay for an important part in its egalitarianism – an egalitarianism that was implicit in all natural law theory; everyone, peasant or nobleman, had access to the inner light and was able to judge not just himself but society as well, a society in which inequality was growing, and with it the call for revolution.<sup>77</sup>

The French revolutionaries were concerned with freedom of conscience, particularly in the sense that they radically opposed its corruption by the economic, political and religious establishment. Robespierre speaks of

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<sup>74</sup> Idem.

<sup>75</sup> Hampson (1968), 131, writes: “It may be argued with equal plausibility that Rousseau was either one of the greatest writers of the Enlightenment or its most eloquent and effective opponent.” As to the American Revolution, this was also inspired not just by Enlightenment thought, but by Protestant ideas as well. Andrew pays particular attention to the thought of the Quaker Thomas Paine, whose work *Common Sense*, Andrew says, “is an odd mixture of enlightened reason and Protestant conscience” (Andrew [2001], 136).

<sup>76</sup> Hampson (1968), 195. See chapter 5.4.

<sup>77</sup> The ‘inner light’ is a very broad symbolization of conscience, in which conscience is not restricted to the individual’s judgement of himself. Andrew rightly notes that the ‘moral sense’ of Shaftesbury and Hutcheson, among others, also has this character of a social, rather than an individual conscience. Andrew (2001), 116. Koselleck would phrase things somewhat differently; he would emphasize that conscience had become a social force – that through the secret conscience society came to oppose politics (the state). Growing inequality was a source of moral criticism, because it was a symptom of the failure of politics. See Koselleck (1973), chapter 2.

“intriguers who purchase the consciences of the delegates of the people”.<sup>78</sup> In the Parisian Petitions to dethrone the King (August 3, 1792), “priests” are mentioned, “as agitators, abusing their power over timid consciences”, and the law of June 10, 1794, speaks of “those who have sought to mislead opinion and to prevent the instruction of the people, to deprave morals and to corrupt the public conscience, to impair the energy and the purity of revolutionary and republican principles...”<sup>79</sup> Conscience gains new power from its association with patriotism: “the rule of judgments is the conscience of the jurors, enlightened by love of the Patrie”.

In seventeenth-century England and Scotland, and perhaps even more in eighteenth-century France, liberty of conscience becomes the battle cry of a new era – in France subsumed under the triad of liberty, equality and fraternity. Conscience offered the opportunity of resistance against political, economic and religious rulers. Compared to ‘Enlightenment reason’, conscience (both the Protestant and the Romantic) had an egalitarian character, which explains much of its popularity.<sup>80</sup> Both Protestant, Enlightenment and Romantic thought valued individuality, each in its own way. Revolutionary puritan thought reveals just as strong a confidence in the power and abilities of man as an individual agent as the optimists among Enlightenment philosophers. The dynamics of history were such, however, that the Protestant background of the sanctity of conscience that served so importantly as a foundation for freedom of conscience, has been all but forgotten – freedom of conscience having become, in the secular minds of the majority of us, an accomplishment of Enlightenment reason.<sup>81</sup> It came to be associated foremost with the secularized human rights discourse. The equality implied in the revolutionary conscience of Milton and Rousseau found an alternative in the equality before the law. This had been made possible by a separation of law and morality, but the very same separation implied that this equality did not extend to the socio-economic realm.<sup>82</sup> Nevertheless, it is part of the democratic order Western countries take so much pride in, and of which freedom of conscience is (to a large extent due to forgotten influences) one of the most powerful symbols.

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<sup>78</sup> Robespierre (1997).

<sup>79</sup> “Parisian Petitions to Dethrone the King”; “The Law of 22 Prairial Year II”.

<sup>80</sup> Andrew (2001), 187. Another ‘equalizer’, as we have seen, was the separation of law and morality. Compare the association of conscience and equity in eighteenth-century Britain, for example in the work of Adam Smith, but also in a popular text like that adduced in chapter 10 as an example of the economic language of conscience.

<sup>81</sup> It is only the Protestant background that is forgotten; the sanctity lingers, even after nineteenth- and twentieth-century (scientific) criticism. Andrew (2001), 33: “Yet the sanctity of conscience persisted, and may even have been enhanced, despite the questioning of its supernatural source.”

<sup>82</sup> Bloch (1977), chapter 22. I will take up this subject in 7.4.1.



## 12. Solutions to the problem of order

### 12.1. INTRODUCTION

Up to now, I have spoken much about freedom of conscience but little about its codification. This will be remedied in the present chapter, in which I will also turn towards the twentieth century. By the time freedom of conscience came to be seen as a natural right, it was no longer theoretically restricted to the field of religion, though in practice this was still the case and would remain so for quite some time. In the twentieth century, we see that practice begins to conform to theory, and that the connection between conscience and religion is loosened; better put: the restriction of conscience to religious convictions and practices is gradually undone.<sup>1</sup> People are granted the freedom to act according to conscience in the civil domain, within the boundaries set by the law – or, in other words: the state recognizes that they cannot deny people the right to do so. An area of conflict remains, however, namely that area in which the conscience of individuals clashes with the requirements of law. Such clashes are partly regulated by the existence of legal provisions for conscientious objection. This is the clearest embodiment of the principle of liberty of conscience at present, and much theorizing concerning liberty of conscience is written with a view to the practice of conscientious objection and its regulation. In the form of provisions for conscientious objection, the state incorporates the problem of order within itself. By doing so, it also solves the problem to a certain extent. Disorder is ordered in advance. I have briefly mentioned Turgot in the previous chapter. In his thought, Koselleck explains, “[d]ie staatliche Ordnungsgewalt bleibt zwar in den Händen des Fürsten, aber nicht der Fürst, sondern ‘man’ entscheidet, was rechtens ist und was nicht. Mag der König immer entscheiden; man entscheidet, wann er nicht zu entscheiden hat. Das Gewissen bestimmt den Ausnahmefall.”<sup>2</sup> In the nineteenth and twentieth century, as a result of increasing state power, conscience *becomes* the exception, and the state determines when and where an exception will be made for it.<sup>3</sup>

Montaigne showed that freedom of conscience can be a recipe for both order and disorder. The question is how to guarantee that it will be the former. This chapter discusses some relatively recent answers to this question. Niklas Luhmann’s answer will take centre stage. I will start with a

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<sup>1</sup> Note that in the twentieth century, this connection mainly entailed that conscientious objection was allowed if the objector belonged to a recognized ‘peace church’ or at least a recognized religious denomination.

<sup>2</sup> Koselleck (1973), 124.

<sup>3</sup> More about the relation between conscientious objection and state power will follow in chapter 14.

section on the redefinition of freedom of conscience in the twentieth century and two ‘pre-Luhmannian’ conceptions of freedom of conscience – if not pre-Luhmannian chronologically, then in spirit. 10.3 will discuss Luhmann’s thought and its adaptation in a fourth approach. I will end with a section on how to understand ‘freedom of conscience’.

Before I proceed with the above, I should answer some questions before they arise – questions that are bound to arise. I will confine myself to a discussion of German theories of freedom of conscience. Therefore, the question is bound to arise why I do not also attend to contributions from the Anglo-Saxon language area? Also, as I make ample use of Vermeulen’s presentation of other positions than his own, it could be asked why I do not also discuss his own views on freedom of conscience. To start with the latter: Vermeulen is mainly interested in the manageability of the legal principle of freedom of conscience and not so much in the philosophical foundation of the principle, which is my interest. As to the former question: it was not so much a matter of confining myself to German theorizing, as one of attending to what was available. There just happens to be much more German reflection (or output of it, anyway) on the meaning and foundation of freedom of conscience than there is in the Anglo-Saxon language area. ‘But what about Rawls?’, one might ask. Rawls, indeed, writes about liberty of conscience and sees it as an integral part of his system of political liberalism – he even claims that “were justice as fairness to make an overlapping consensus possible it would complete and extend the movement of thought that began three centuries ago with the gradual acceptance of the principle of toleration and led to the nonconfessional state and equal liberty of conscience”.<sup>4</sup> Andrew Murphy convincingly demonstrates, however, that “Rawls’s ‘completion and extension’ of liberty of conscience represents, instead, a retreat from the philosophical and political foundations of that movement”.<sup>5</sup> Murphy explains that “[t]he possible role for any nonliberal, nonrational comprehensive doctrine progressively shrinks as a reader proceeds through *Political Liberalism* and Rawls repeatedly expands the scope of public reason”; Rawls even goes so far as to claim that, in Murphy’s words, “voting on the basis of one’s comprehensive doctrine is illegitimate”.<sup>6</sup> At best, then, Murphy concludes, “Rawls’s liberalism is (...) a belief-action split that has historically worked against liberty of conscience”.<sup>7</sup>

The fact that Rawls’ liberalism entails a belief-action split deprives an observation of his that could have been of interest here of much of its value, as it has become an isolated remark, contradicted by the tenor of the rest of

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<sup>4</sup> John Rawls, *Political Liberalism*, Columbia University Press, New York, 1993, 154, quoted in Murphy (1998).

<sup>5</sup> Murphy (1998).

<sup>6</sup> Idem.

<sup>7</sup> Idem.

*Political Liberalism*. Murphy presents this observation as follows: “At a (...) philosophical level, liberty of conscience serves as a necessary prerequisite for individuals to exercise their moral powers, to develop, revise, and pursue their conceptions of the good over the course of a lifetime.”<sup>8</sup> This is a rather general remark, entailing a broad view of liberty of conscience – most of the time, people can exercise and develop their moral powers without ever needing to take recourse to an appeal to conscience; that is, without ever requiring the support of the legal principle of freedom of conscience. A common distinction in the literature is that between freedom of conscience as a metajudicial principle and as a principle of positive law. Luhmann’s notion of freedom of conscience, as will become clear, is metajudicial; it grounds and interprets the legal principle of freedom of conscience. Several other German theorists also express the first sense of freedom of conscience.<sup>9</sup> Rawls’ conception of liberty of conscience ‘at a philosophical level’ is even broader. However, the interest Rawls’ observation might have had for my purposes is greatly diminished by the fact that Rawls does not develop its meaning; instead, he negates it. A last remark with regard to Anglo-Saxon reflection on freedom of conscience is that at least in the United States, by my knowledge, all development of the legal principle of freedom of conscience occurred by way of jurisdiction and responses (by judges) to jurisdiction; in other words, the meaning of the principle is constantly redefined in and by practice.<sup>10</sup>

## 12.2. BEFORE LUHMANN

Now that we must move towards a legal-philosophical discourse, it seems appropriate to say something about the legal career of the notion of freedom of conscience. Vermeulen states that freedom of conscience as a general human right was recorded for the first time in the *Unie van Utrecht* (1579). The term ‘freedom of conscience’ (in old Dutch: ‘vrijheid van conscientie’) was not used in that document itself, though. In later legislation, however, the thirteenth article of the document is interpreted and confirmed as ‘freedom of conscience’.<sup>11</sup> Vermeulen points out the importance of the new scientific ‘analytic-synthetic’ method for political theory. Applied to the state, it means that the state is analysed into its basic elements, which are taken to be individual (atomic) persons in a pre-societal state of nature. The synthesis of these elements proceeds through a postulated contract or covenant, as we find it explained by Hobbes and others. Due to such an interpretation of the state and its relation to individuals, natural rights accrue to these individuals.

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<sup>8</sup> *Idem*.

<sup>9</sup> See: Mock (1983), 69; Eckertz (1986), 257 ff. about Bäumlín, Stein and Mock.

<sup>10</sup> Galston (2002).

<sup>11</sup> Vermeulen (1989), 57.

Freedom of conscience comes to be seen as a natural and inalienable right of every individual.<sup>12</sup> I have already referred to the importance of the separation of law and morality in this respect. This, Bloch explains, has two sides: the first is the separation of law from morality, the second the separation of morality from law. The first ‘freed the subjective rights’. “Der vom objektiven Recht freie Raum ist größer als der von Moral freie, der juristische Pflichtraum daher kleiner als der moralische. In diesem Unterschied meldeten sich die subjektiven als Freiheitsrechte, denen sehr viel weniger Pflichten gegenüberstehen oder gar eingeschrieben sind als den Freiheitsrechten in der Moral. Sie sind Naturrecht und haben sich genau jenen Teil Freiheit zurückbehalten, der zum Zweck der äußeren Sicherheit nicht abgegeben werden mußte.”<sup>13</sup> The separation of morality from law relates to the external incoercibility of moral commandments, which is ‘used’ to turn these commandments into rights: “ist beispielsweise Gewissensfreiheit äußerlich unerzwingbar, so ist sie auch, wo sie auftritt und das Ihre fordert, äußerlich unverbietbar.”<sup>14</sup> “Nach Seite Ihrer Pflicht (Gewissenspflicht),” Bloch continues, “gehört sie zur Moral, als dem Gebiet hoher Anforderungen, autonomer Normen; nach Seite ihrer Unverbietbarkeit gehört die Gewissensfreiheit zum subjektiven Recht und wurde so das Modell der Menschenrechte.”<sup>15</sup>

Vermeulen points out that the reach of the principle of freedom of conscience as it was laid down in the edicts, treatises, acts and proclamations of the sixteenth and seventeenth century was fairly limited. As I said in the introduction, in its most lenient form the principle prohibited inquisition and allowed not only domestic but also public religious worship – public meaning: in a church. The English Toleration Act of 1689 that followed the Glorious Revolution of the year before, Zagorin reports, “granted dissenters who believed in the Trinity (which was nearly all of them) freedom of public worship, preaching, and teaching. It did not, however, remove any of their

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<sup>12</sup> Ibid., 59-60.

<sup>13</sup> Bloch (1977), 261. [“The freedom allowed by objective (positive) law is greater than that allowed by morality, the juridical space of duty therefore smaller than the moral. In this distinction, the subjective rights presented themselves as rights of freedom, that had far less duties as their counterparts than rights of freedom in morality. They are natural law and have retained exactly that part of freedom that did not have to be surrendered for the purpose of external security.”]

<sup>14</sup> Ibid., 262. [“is, for instance, freedom of conscience externally incoercible, so it is, where it asserts itself and claims its own, externally unprohibitably.”]

<sup>15</sup> Idem. [“To the side of its duty (conscientious duty) it belongs to morality, as the sphere of high demands, autonomous norms; to the side of its unprohibitability freedom of conscience belongs to subjective law and thus became the model of human rights.”] In chapter 11, we saw Milton defending the idea that the *legal* rights of conscience correspond to its *moral* duties; evidently, he did not differentiate between law and morality.

civil disabilities, such as their inclusion from public office, and Catholicism remained a prohibited religion.”<sup>16</sup> Things did not proceed smoothly in France either, with the withdrawal in 1685 of the Edict of Nantes (1598). Nevertheless, in the course of the eighteenth, and especially the nineteenth and twentieth century, freedom of conscience (in the sense of freedom of religion) came to be recognized as a fundamental individual human right in all western European countries, as well as in the United States. All these countries saw a separation of church and state, and came to recognize the equality before the law of different religions.<sup>17</sup>

In his presentation of the development of the right to freedom of conscience in French legislation, Vermeulen quotes from the first article of the *Loi relative à la séparation des Eglises et de l'Etat* (1905): “La République assure la liberté de conscience. Elle garantit le libre exercice des cultes...”<sup>18</sup> But, Vermeulen notes, this ‘liberty of conscience’ has acquired a different meaning from the old one of a minimum of religious freedom for minority groups, as it “now functions as a summarizing denominator for the secular state, characterized by the separation of church and state and by religious freedom for all”.<sup>19</sup> In effect, ‘freedom of conscience’ had become a redundant formula in the legislation of the now secular states of Western Europe. Freedom of conscience had always meant religious freedom of some kind. In secular states, in which state and church are separated and individuals, irrespective of their religion, are equal before the law, there is no use for a separate right to freedom of conscience in its ‘traditional’ sense of religious freedom.<sup>20</sup>

In the twentieth century freedom of conscience does not disappear from legislation, but it is redefined along lines that were set out much earlier in theory but never effectuated in practice. The redundancy the principle had due to its interpretation as religious freedom did not mean the end of it. In fact I would say that in the twentieth century, ‘freedom of conscience’ and ‘conscience’ moved closer towards each other again – or at least they had that opportunity. Freedom of conscience in its sense of religious freedom negated a large part of the meaning of ‘conscience’. Now, it could and had to open up again towards this part, in order to retain its juridical significance.

In the twentieth century, freedom of conscience is no longer restricted to the domain of religious action, but becomes the right to act in accordance with one’s conscience in the civil domain.<sup>21</sup> This is where

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<sup>16</sup> Zagorin (2003), 267.

<sup>17</sup> Vermeulen (1989), 67.

<sup>18</sup> *Ibid.*, 68. Vermeulen quotes from Z. Giacometti, *Quellen zur Geschichte der Trennung von Staat und Kirche*, Tübingen, 1926, 272. [“The Republic assures liberty of conscience. She guarantees the free exercise of cults...”]

<sup>19</sup> Vermeulen (1989), 68.

<sup>20</sup> *Ibid.*, 71.

<sup>21</sup> *Ibid.*, 73.



freedom of conscience becomes juridically problematic: “*It was this conjunction with a narrowly delineated religious frame of action that made freedom of conscience a juridically manageable right.*”<sup>22</sup> At first, the problem was manageable, because conscience was still religiously defined – which meant, in practice, that conscientious objection was only recognized as such if it had a basis in a recognized religion. Secularization and increasing plurality put an end to this. In the course of the twentieth century, freedom of conscience could no longer be restricted to any specific domain. Also, it became increasingly clear that no substantial or material criterion could be used any longer as a test of conscientious action or objection. Instead, *formal* criteria had to be devised and used. That meant, for instance, that instead of judging a person’s conscience with regard to its truth-value, it became the task of judges to ascertain the seriousness of a person’s convictions – to ascertain, more accurately, whether the matter at hand was really a matter of conscience to the person in question. In short: the problem of order in its first dimension became pressing again when conscience burst through its traditional religious bounds; in its second dimension, as the problem of subjectivity, it urged towards a formalistic conception of conscience.

It took some time before theorists in general accepted the necessity of formalism (with regard to both conscience and freedom of conscience) – a formalism (in response to a necessity of formalism) that had been implicit in the notion of freedom of conscience from the beginning, though only to a certain extent.<sup>23</sup> Vermeulen (partly following Mock) distinguishes four strands in German legal theory that tried to make freedom of conscience legally manageable – that tried, in other words, to deal with the problem of order – of which the first two fall under the heading of the present section.<sup>24</sup> Of the third, Niklas Luhmann is the main representative; the fourth is an adaptation of Luhmann’s theory. These will be attended to in the following section.

The first strand is that of the ‘value objectivists’, who stick to a substantial definition of conscience. Vermeulen mentions K. Brinkmann as its most explicit representative. Conscience, in his view, is a “Wissen um das Gerechte (Recht, objektiv Gute), und Ungerechte (Unrecht, objektive Böse)”.<sup>25</sup> This means that freedom of conscience is the freedom to act in

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<sup>22</sup> Idem.

<sup>23</sup> As must be clear from chapters 1 and 8, I reject a *full-blown* formalism of conscience. What this means for my view on freedom of conscience will become clear in 12.4.

<sup>24</sup> It appears that there has been much more reflection (or at least: output of reflection) on the subject in Germany than elsewhere.

<sup>25</sup> K. Brinkmann, *Grundrecht und Gewissen im Grundgesetz*, Bonn, 1965, 61ff., in: Vermeulen (1989), 163. [“knowledge concerning the just (right, objectively good), and unjust (wrong, objectively evil)”]

accordance with the objectively right view.<sup>26</sup> Vermeulen further mentions W. Hamel and F. W. Witte as adherents to a ‘value objectivist’ view.

The second strand of thought entails a ‘sphere-theory’, which attempts to delimit freedom of conscience by assigning to the individual a sphere in which conscientious action is allowed and outside of which it is not. Such a territorial limitation is suggested by Heinrich Scholler, according to whom freedom of conscience protects a certain ‘Geheimsphäre’ [‘secret sphere’], which is a part of the private sphere that is not accessible to others offhand. That does not mean that freedom of conscience functions to protect the privacy of individuals. The primary goal of the principle is to enable the individual to live according to the moral norms that compel him with the least possible added burdens.<sup>27</sup> Scholler’s approach has the great disadvantage that it is, as Vermeulen notes and Scholler himself admits, impossible to tell where the ‘Geheimsphäre’ ends and the public sphere begins. Scholler’s criterion to determine whether a person’s ‘Geheimsphäre’ has been violated, is to see whether this person has been touched in the core of his being (‘Tiefenperson’, ‘Persongeheimnis’, ‘Kern der Persönlichkeit’) – a criterion, obviously, that does not eliminate the vagueness of the concept of a ‘Geheimsphäre’. Ekkehart Stein gives a different twist to the territorial approach. For him, there can only be *one* real limit to freedom of conscience, namely the freedom of conscience of others.<sup>28</sup> Everyone, in Stein’s view, is free to act in accordance with the dictates of his conscience in his own sphere (‘Eigensphäre’), which must be defined by law. In relation to the state, a person’s ‘Eigensphäre’ is the sphere outside the ‘den Staat ausmachenden Wirkungszusammenhangs’ [‘functional whole that is the state’].<sup>29</sup> This seems to suggest, but does not mean, that positive law always prevails over the subjective right to freedom of conscience. According to Stein, a violation of the sphere of another or of the state is only possible through *action*; from this follows, for Stein, that conscientious *inaction* is protected by law. Vermeulen rightly concludes that this view is unacceptable. It is impossible to separate each individual’s sphere from that of all others. Furthermore, the distinction between action and inaction does not hold; there are many situations in which inaction means culpable neglect.<sup>30</sup> Vermeulen notes several other problems of Stein’s view; I will not mention them here, but note one point of criticism Vermeulen does not come up with. What I find remarkable about the ‘territorial approach’, that attempts to confine freedom of conscience to a particular sphere, is that it seems to ignore the nature of conscience – and I can say this without presupposing

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<sup>26</sup> Brinkmann, 99, as interpreted by Vermeulen (1989), 163.

<sup>27</sup> Vermeulen (1989), 165.

<sup>28</sup> Stein (1971), 57.

<sup>29</sup> Vermeulen (1989), 166; Stein (1971), 58-59.

<sup>30</sup> Vermeulen (1989), 167.

my own view of conscience. Stein took the trouble to study the history of thought on conscience, but even that did not prevent him from suggesting the limitation of freedom of conscience to the 'Eigensphäre' of individuals. The point both Scholler and Stein seem to miss, is that conscience, in principle at least, knows no limits to its area of application.<sup>31</sup> Just as we take morality to hold in any context (even though every practice also has its own rules and changes the hierarchy of urgency of moral rules), and *because* it does so, conscience cannot be confined to any particular sphere. If one met a person claiming to act according to his conscience in his 'own sphere', but only in accordance with external norms in the public sphere, one would certainly raise a brow. Such behaviour is rightly frowned upon; we expect people to act conscientiously *in all situations*. This does not mean that one ought to go to any length at all times to do the most conscientious thing; we do many things routinely, without much thought, and this is just as well. But when we run into a problem – let's say that we are a civil servant and encounter a gross unfairness in a procedure, which only on very rare occasions will come to light, but is nevertheless much to the disadvantage of the very few individuals involved – we ought to act conscientiously (however one would want to fill that in in this particular instance), instead of blindly following procedures.<sup>32</sup>

To assign conscience to a sphere of its own is not a satisfactory solution to the problem of order; it runs counter to the nature of conscience, and thereby runs the risk of provoking disorder. That conscience, and therefore also freedom of conscience, cannot be limited to a particular sphere, does not mean that there can be no limits to freedom of conscience. Freedom of conscience is of necessity a limited principle – only, it cannot be limited to a particular sphere. The principle of freedom of conscience *may* apply in any context, but whether it *does* in fact apply, and whether, *if* it applies, it must prevail over other principles, remains to be decided. Luhmann attempts to provide criteria to help judges decide in these matters.

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<sup>31</sup> Luhmann: "[D]as Gewissen erfaßt alles Verhalten ohne Ausnahme."; "Das Gewissen und mithin die Gewissensfreiheit beziehen sich auf alle Themenbereiche, mit denen ein Mensch sich in seinem Verhalten identifizieren kann..." – Luhmann (1965), 275 and 280.

<sup>32</sup> In his "Social Structures and their Threats to Moral Agency", (in *Philosophy*, Vol. 74, Issue 3, 1999, 311-329), Alasdair MacIntyre stresses the importance of such practice-transcending questions – questions that cannot be dealt with within the normative framework internal to the practice we participate in – that (he assumes) we must all face and one time or another (see Musschenga [2004], chapter 6).

### 12.3.1. Luhmann's concept of freedom of conscience

Social scientific approaches to conscience are sometimes presented as if they entailed a superior insight that finally, after centuries of vain toiling and moiling by clouded minds, broke through like a beam of sunlight. Ekkehart Stein states that “[d]ie kritische Sichtung philosophischer Aussagen über das Gewissen hat ergeben, daß bisher alle Versuche, als Bezugspunkt des Gewissens eine transzendente Realität (ein absolutes Sittengesetz oder eine objektive Wertordnung) nachzuweisen, gescheitert sind”.<sup>33</sup> This is why, in his view, legal philosophers should turn to psychology for instruction. But he misses the point. The conceptual history of conscience exhibits a great variety of concepts, and this is neither surprising nor much revealing with regard to the value of those concepts. This conceptual history is not the story of a search for an adequate conceptualization of conscience that for many centuries resulted in nothing more than a growing pile of inadequate concepts, only to succeed in the second half of the twentieth century in finding an adequate, because non-transcendent, concept. A much closer approximation of the truth would be to say that every period in history generates its own symbolization and conceptualization. ‘The’ scholastic concept of conscience – the unity despite variety is what is relevant here – has not been falsified by later concepts; not even by formalistic concepts. It fitted the experience of that time, its worldview and its anthropology. This is not to say that it was representative of the experience of the ‘common people’. It was a highly artificial construct – but as such, it was typical of its age. Historically, few expressions and concepts may have been able to lay claim to the status of being a symbolization or conceptualization of the generalized experience of all; some belonged to a smaller segment of society. Nevertheless, the conceptual history of conscience shows definite tendencies; the concept evolving with the experience of the age. The different concepts that were constructed in the course of time were representative of the way people at each historical juncture came to terms with their world, which is all that the functionalist view could ever claim for itself.<sup>34</sup> Luhmann, as we have seen in 7.3.2, did not miss this point. He understands his concept of conscience as the kind required by socio-

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<sup>33</sup> Stein (1971), 43. [“critical study of philosophical statements about conscience has shown that so far, all attempts to point out a transcendental reality (an absolute moral law or an objective moral order) as a point of contact for the conscience have failed”]

<sup>34</sup> On the one hand, this holds true for my own concept of conscience as well; on the other hand, as it is meant to be a ‘meta-concept’, it does not merely depart from my own present experience of conscience, but attempts to do justice to past experiences of conscience, too.

historical circumstances, and intends it to be a solution to the problem of order in relation to freedom of conscience as it appears in his time.

I have called the previous section “Before Luhmann”, and this one “Luhmann and after”, suggesting a chronological sequence more perfect than it in fact is. Stein, for example, wrote his *Gewissensfreiheit in der Demokratie* in 1971, six years after Luhmann published his article “Die Gewissensfreiheit und das Gewissen”. Nevertheless, this period saw a transition towards a formalistic or functionalist approach, a transition in which Luhmann is the major figure. Other functionalist views refer back to Luhmann’s 1965 article. I will first explain Luhmann’s views on freedom of conscience; next, I will look into Vermeulen’s presentation and critique of Luhmann’s thought (the third strand of thought in German legal theory Vermeulen distinguishes), and his remarks on the adaptation of Luhmann’s views that constitutes the fourth strand of thought on freedom of conscience. I will conclude this section with own critique of Luhmann’s position.

What I will say about Luhmann’s theory of freedom of conscience presupposes what I have said about Luhmann’s concept of conscience in 7.3.1. Luhmann’s concept of conscience is an attempt 1) at clarification, 2) to free the concept from the restrictions imposed by religious or moral content, 3) to establish criteria that enable us to distinguish (in juridical practice) ‘dictates’ of conscience from other subjective impulses, and, finally, 4) to scientifically reconstruct the experience of conscience and the plausibility of religious and moral terminologies based on that experience.<sup>35</sup> The concept of conscience needs clarifying, according to Luhmann, because existing (conflicting) theories are not able to explain whence the authority of conscience comes from, given that the truth of dictates of conscience cannot be ascertained, and because of the confusion concerning freedom of conscience and conscientious objection that exists in the juridical sphere. As we cannot verify dictates of conscience, and given the way conscience functions, we must let go of any remainders of substantialist accounts of conscience. This explains the need for the criteria mentioned in point 3. I take it to be an important merit of his view of freedom of conscience that it is so consistently based on his concept of conscience.

Luhmann’s view of conscience presupposes a relative independence of the personal from the physical system, and on this basis he comes to a rather unusual conception of freedom of conscience. He explicitly distinguishes the ‘Freiheit des Gewissens’ from ‘Gewissensfreiheit im landläufigen Sinne’. The freedom of conscience Luhmann’s concept of conscience implies is the ultimate freedom to choose one’s own death; it is a

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<sup>35</sup> See for the first goal: Luhmann (1965), 257-259, 263 and Luhmann (1973), 223; for the second: Luhmann (1965), 258-259, 270 and Luhmann (1973), 224, 241; for the third: Luhmann (1965), 260, 284-286; and for the fourth: Luhmann (1973), 223, 237-243.

‘Freiheit zum Tode’ [‘freedom unto death’]. But this is not a very useful conception of freedom of conscience in the juridical sphere, and as Luhmann does not think much of what is commonly understood by ‘freedom of conscience’, he develops his own concept of ‘Gewissensfreiheit’ pertaining to the juridical sphere, which is also to be distinguished from the ‘Freiheit des Gewissens’ in the somewhat dramatic sense explained above. Normally, Luhmann says, people hold ‘freedom of conscience’ to mean the freedom to act according to one’s conscience. But looking at the latent functions of the institutionalization of conscience as a fundamental right, we will, according to Luhmann, have to come to a different conclusion: “Die Gewissensfreiheit soll die Orientierung des Handelns am individuellen Gewissen nicht ermöglichen, sondern ersparen.”<sup>36</sup> What does this mean?

Luhmann propounds a functionalist view of conscience and freedom of conscience in the context of his systems theory. Point of departure of his analysis, Vermeulen explains, is the maintenance (or preservation) and stabilization of the social system.<sup>37</sup> In other words: the first dimension of the problem of order returns in Luhmann’s theory in terms of the *preservation and stability of the social system*. Luhmann looks at conscience and freedom of conscience mainly from the aspect of conflict, both intra-personal and between persons and the state. Conscience, though functioning as a stabilizer within the individual, is a potential threat to the stability of the social system. The consistency that is generally demanded and expected of individuals can become such a threat when the state demands behaviour of an individual that would be inconsistent with who that person has been in the past, who she is and who she desires to be. The crisis of conscience that may be the result may have disruptive consequences in the individual’s social and professional surroundings. The principle of freedom of conscience functions to resolve conflicts that may arise in the described manner, or to prevent them from arising: “Die Gewissensfreiheit hat nur den Sinn, die Einzelperson und ihre vielfältigen Rollenbeziehungen gegen Gewissenskrisen zu schützen.”<sup>38</sup> Hence the observation: “Die Gewissensfreiheit soll die Orientierung des Handelns am individuellen Gewissen nicht ermöglichen, sondern ersparen.” This sounds a bit awkward, given that conscientious objection, even if it is recognized by the state and an acceptable alternative is offered by which the conflict is resolved, is still *conscientious* objection, but it is merely the result of Luhmann’s preoccupation with conflict. It is the ‘Entlastungsfunktion’ of the state to prevent that an individual has to go

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<sup>36</sup> Luhmann (1965), 271.

<sup>37</sup> Vermeulen (1989), 168.

<sup>38</sup> Luhmann (1965), 281. [“Freedom of conscience is only meant to protect the individual and his manifold role relations against crises of conscience.”]

through with his conscientious objection to the perhaps bitter end.<sup>39</sup> Luhmann states as a general guideline: “Die Folgen des Konflikts muß derjenige tragen, der über Alternativen verfügt, der also dem Konflikt ausweichen könnte.”<sup>40</sup> Luhmann mentions Podlech, who took this idea a bit further and saw it as an obligation of the state to provide alternatives – a position which is in line with Luhmann’s 1965 article.

Given the function Luhmann ascribes to (or calls) conscience, namely: guarding the identity of its owner, and given the (theoretical) primacy for Luhmann of the stability of the social system, it is understandable that his focus is on *conflicts* of conscience, the kind of critical situation in which an individual’s whole personality is at stake. We have seen what key question Luhmann associates with conscience: ‘Can I do this and still be me?’ This question does not arise in connection with habitualized behaviour, whether it would be approved of by conscience, or not. Conscience stirs when an individual is inclined to or demanded to do something out of the ordinary. In such a situation a reflective decision has to be made. For example, when a young man, who is a pacifist, is called up for military service, he has to decide whether to give in (and go against his conscience) or to stand by his convictions. When he decides to do the latter, that is: to follow his conscience, this would entail a certain way of acting that would probably have disruptive consequences in certain areas of his life (private or public), *if* the state would stick to its demands. In western European countries (among others), however, allowances are made for conscientious objection, of which the case above is an example. This means that the conscientious objector is offered an alternative, a way out, so to speak, by which means disruption of his private and/or public life can be avoided. In a sense, as I said before, the objector does not have to see it through to the bitter end. That, I believe, is why Luhmann prefers to speak of the state *sparing* an individual’s conscience, instead of enabling persons to act according to their consciences. It depends largely on when one sees conscience as active. One could argue that the conscientious objector in our example acts according to his (active) conscience anyway, whether the state makes allowances for it, or not. On the other hand, clauses concerning freedom of conscience are not included in the law to enable action according

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<sup>39</sup> A second reason to formulate the meaning of freedom of conscience in the negative, like Luhmann does, might be that freedom of conscience as the freedom to act in accordance with one’s conscience would be too broad a principle. Vermeulen (1989), 213, mentions Geiger’s idea that freedom of conscience should not mean more than that people are not forced to go against what their conscience *commands*. The coerced failure to act in a way *approved*, but not *commanded* by conscience, cannot be a problem for the conscience.

<sup>40</sup> Luhmann (1970), 19. [“The consequences of the conflict should be born by that party, that has alternatives at its disposal, and hence could have avoided the conflict.”]

to conscience *in general*. As long as such action is not against the law, there is no need for such a clause. Freedom of conscience is secured by law to resolve *conflicts* between individuals and the state, by offering individuals a way out of conflicts of conscience resulting from these conflicts with the state. This is the aspect Luhmann draws attention to.

Luhmann stated as a guideline or criterion for evaluating conflicts between the state (or another demanding party) and conscientious objectors that the costs of the conflict should be borne by the party with alternatives at its disposal. Vermeulen criticizes this criterion, saying that it is insufficient, as there are situations in which neither the state nor the individual have alternatives at their disposal. Luhmann stated that in such a situation, the right of the individual should prevail.<sup>41</sup> Does this open the door to disorder? Does it leave the state defenceless in face of the onslaught of the subjective conscience? For Luhmann, the problem of subjectivity was never a problem in itself, but only with a view to the problem of political order. Now, it turns out that, far from posing a danger to the state, the subjectivity of conscience is not a problem at all. What matters is not *on what grounds* anyone objects conscientiously, but whether the objection is indeed a *conscientious* objection, which in Luhmann's view means that the identity of the individual is at stake.<sup>42</sup> The view that the right of the individual should always prevail where there is no alternative available to either party is unacceptable to Vermeulen, which is understandable, but it is doubtful how often a situation will arise in which there is no alternative whatsoever. Luhmann, in any case, estimates that real crises of conscience occur very rarely.<sup>43</sup> Vermeulen goes on to say that Luhmann's criterion is *incorrect*, because its consistent application would lead to the conclusion that "conscientious objections to involuntarily accepted active duties always have to be conceded to", as the conscientious objector has no alternative that he can accept in good conscience.<sup>44</sup> I must say that Vermeulen's argument eludes me. In practice, it occurs quite frequently that an alternative is found that is acceptable to the conscientious objector. Many conscientious objectors to military conscription accepted alternative service. Furthermore, it seems to me that, despite Luhmann's suggestion in his 1970 article that in cases where there is no alternative for

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<sup>41</sup> Idem.

<sup>42</sup> Another variant of the problem of subjectivity might pertain exactly to that question: is someone's objection a conscientious objection or not. The problem of subjectivity would then not be that the 'dictates' of an individual's conscience may differ from those of any other person's, but rather that each individual would have her own subjective view of what conscience is and what, therefore, a conscientious objection is. Luhmann's functionalist approach to conscience answers this problem as well, by formulating as a general characteristic of all conscientious objections that they are grounded in convictions that are central to the objector's identity.

<sup>43</sup> Luhmann (1970), 22.

<sup>44</sup> Vermeulen (1989), 169.



either party the right of the individual ought to prevail, the general tendency of his view on the subject points towards another conclusion. If the state were to have to concede to conscientious objection too often, this could either lead to modification of the law(s) involved (for example: it could mean the end of conscription), or, with the laws involved remaining the same, the interest of the stability of the social system as a whole would prevail over the interests of individuals. Conceding to too many conscientious objectors might have a stronger destabilizing effect than the combined crises of the consciences involved would have. Given that the stability of the social system has Luhmann's primary attention, being the very basis underlying freedom of conscience in his view, it seems likely that if in a certain situation the stability of the social system would be furthered by a less yielding attitude of the state, Luhmann would approve of that attitude. In the present context, however, Luhmann takes the situation not to be so.

Vermeulen suggests that Luhmann in fact uses another criterion than the one he puts forward in his 1970 article. In 1965, Luhmann made clear that a conscientious actor who breaks the law with his action must be punished without hesitation – in such a case, Luhmann says, it was up to the individual to find an alternative for his action.<sup>45</sup> The fact that Luhmann thinks the conscientious actor breaking the law is punishable leads Vermeulen to conclude that Luhmann cannot be using his 'criterion of alternatives': "the conscientious actor, after all, has no other option which he can justify to himself in good conscience, whereas the state does have the possibility of granting him dispensation".<sup>46</sup> It seems to me that this is incorrect; if someone perceives an injustice or some other wrong in society, and feels that action should be taken to redress this wrong, this does not mean that there is only one way to redress it.<sup>47</sup> It is unlikely that breaking the law is the only option, even if, in some cases, it may be the most effective option – the likelihood of which I will not discuss here. One can draw public attention to what one sees as a wrong to be redressed, organize protest marches, et cetera. So Luhmann's suggestion that it is up to the individual, in a case like this, to find alternative ways of action, does not seem unreasonable. Vermeulen, however, thinks that Luhmann's actual criterion is

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<sup>45</sup> Luhmann (1965), 283.

<sup>46</sup> Vermeulen (1989), 169.

<sup>47</sup> The problem is similar to that which McKinnon identifies as the key problem with regard to toleration: how can we understand a person's opposition to something as one based in commitments she genuinely takes to be justified through what McKinnon calls 'responsible belief', while at the same time accepting that "other-regarding action in line with [those commitments] is not justified"? In other words: how do we avoid the paradox of toleration, which entails that we can only tolerate what we (justifiedly) evaluatively disapprove of, and that what we disapprove of in this manner should not be tolerated. (McKinnon [2006], 33; 26-27.)

that of the *damage* done to the public interest or individual rights, which weigh heavier than the ‘interest of conscience’.<sup>48</sup>

This brings Vermeulen to the fourth strand of thought, which is an adaptation of Luhmann’s position. According to Podlech and Mock, when individuals are faced with legal obligations they cannot in good conscience fulfil, the state must offer them alternatives, unless these are not available or would lay too heavy a burden on society.<sup>49</sup> This brings us closer to the point, though not close enough, according to Vermeulen. The central issue, Vermeulen holds, is that of a weighing of ‘legal goods’, of the ‘Gewissensposition’ against the rights of others and public interests, in which the availability of alternatives is only one of the factors to be taken into consideration.<sup>50</sup> We have hereby reached the fourth position, which entails an advocacy of the method of ‘Güterabwägung’, the weighing of goods, a method advocated by many authors: Podlech, Bäumlín, Freihalter and others. Vermeulen argues convincingly against the method of ‘Güterabwägung’: it is impractical, as there is no criterion to be used in the weighing of goods; it is often unclear what exactly has to be weighed against what; it does not provide a solution for the problem of the ‘boundlessness’ of conscience – all in all, it “does not provide us with useful criteria to determine the limits of freedom of conscience”.<sup>51</sup>

I agree with Vermeulen’s dismissal of the method of ‘Güterabwägung’, but not with his idea that “this is what the system-theoretical approach in the end amounts to”.<sup>52</sup> The question of the damage resulting from different possible ways of resolving conflicts is of crucial importance to Luhmann, but not in the way Vermeulen suggests. The concern with (system) damage *precedes* and underlies Luhmann’s arguments concerning the way to evade or resolve particular conflicts. Legal provisions for conscientious objection are designed to prevent or minimize system damage; particular cases are not judged by the criterion of damage, but by that of the availability of alternatives.

### 12.3.2. A critique of Luhmann’s position

One of the merits of Luhmann’s view of freedom of conscience is that it provides criteria to judge appeals to conscience. It imposes limits on what the state can accept as such an appeal and what not. As I said before, Luhmann accepts the necessity of formalism – his functionalist theory continues the development towards formalism that is inherent in the idea of freedom of conscience – while trying to solve the problem of subjectivity.

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<sup>48</sup> Vermeulen (1989), 169.

<sup>49</sup> Idem.

<sup>50</sup> Idem.

<sup>51</sup> Ibid., 172.

<sup>52</sup> Ibid., 173.

Luhmann does not revert to objectivist criteria; he does not try to get rid of subjectivity. He accepts subjectivity as a given, and argues from a system-theoretical perspective that a) to allow some form of freedom of conscience is necessary for the stability of the social system – here we see the conjunction of the two dimensions of the problem of order, and b) the criterion for conceding or not conceding to an appeal to conscience lies in the availability of alternative courses of action to either party. The conscientiousness of objections (i.e. whether something counts as an appeal to conscience) is judged by the criterion of damage to the personal system. If the individual's personal system is endangered, this constitutes a threat to the stability of his social environment. This is the final ground for allowing freedom of conscience.

Dietrich Franke criticizes Luhmann for *de facto* taking psychological damage as the criterion for conscientiousness; he takes this criterion to be too restrictive: “Es wäre eine nicht gerechtfertigte Verengung des Persönlichkeitsschutzes, wenn man mit der älteren Rechtsprechung des Bundesverwaltungsgerichts zur Kriegsdienstverweigerung den Gewissensschutz auf Persönlichkeiten beschränken wollte, die durch den Gewissenskonflikt zu ‘zerbrechen’ drohen.”<sup>53</sup> He goes on to say, with more pathos: “Der grundrechtliche Gewissensschutz läßt sich nicht auf ein Recht verkürzen, vor staatlich zugefügten Neurosen geschützt zu werden.”<sup>54</sup> Franke thinks that “the respect on behalf of the state for the moral autonomy of the individual should commence earlier”, and maintains that freedom of conscience as Luhmann understands it “serves less the protection of conscience than the protection of the state against conscience”.<sup>55</sup> Franke goes to far, I think, when he speaks of the Luhmannian conscience as “von allen gesellschaftlichen Geltungsansprüchen getrennt”, as “das blinde Kontrollzentrum eines zersplitterten Selbst” and later on as “ruhigzustellende irrationale Instanz (...) staatstheoretisch an den Rand der Irrelevanz”.<sup>56</sup> But with his general criticism he makes an important point against Luhmann. Should we allow freedom of conscience; more specifically, should we accommodate conscientious objections, because by doing so we prevent psychological damage in personal systems? Is this the

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<sup>53</sup> Franke (1989), 15. [“It would be an unjustified narrowing of the protection of the personality if, (in agreement) with the older jurisdiction of the *Bundesverwaltungsgericht* (highest administrative tribunal) with respect to conscientious objection to military conscription, one wanted to limit the protection of conscience to personalities that are in danger of ‘falling apart’ due to the conflict of conscience.”]

<sup>54</sup> Idem. [“The constitutional protection of conscience cannot be reduced to a right to be protected against neuroses caused by the state.”]

<sup>55</sup> Idem.

<sup>56</sup> Ibid., 15-16. [“separated from all societal self-assertive claims”; “the blind control center of a splintered self”; “irrational instance to be soothed (...) from the perspective of state theory on the verge of irrelevance”]

basis of the importance of appeals to conscience? That does indeed seem to be a misconception. In one sense, the criterion is too restrictive, as Franke points out. In another sense, it is too broad: it is very well possible that not to recognize certain nonconscientious objections could also lead to serious damage to personal systems. So Luhmann mislocates the importance of appeals to conscience – a problem to which I will return in part III.

Franke may be right in his criticism, but the alternative he offers is not very appealing. From his criticism of Luhmann, and even more from the rest of the article, it is clear that Franke favours a much broader interpretation of freedom of conscience, in which the triad of conscience, responsibility and democracy figures most prominently. His talk of a ‘dialogical conscience’ (among other things) reveals that Franke uses the term ‘conscience’ very broadly, and also very vaguely. It may be closest to Locke’s description of conscience as “nothing else but our own opinion or judgment of the moral rectitude or pravity of our own actions”. The ‘conscience’ in Franke’s freedom of conscience, has little to do with conscience as experienced by the individual, nor with any psychological or philosophical use of the term. On the whole, Franke’s view of freedom of conscience renders it completely impractical.

Luhmann, in fact, scores better on the points on which Franke fails. Yet, I am not satisfied with his theory. I have made some critical remarks about Luhmann’s concept of conscience in chapter 7, that I will not repeat here. I take it to be a merit of a theory of freedom of conscience if it is based on a plausible concept of conscience. Luhmann’s concept of conscience goes a long way, but is, in my opinion, inadequate in some important respects. Recall the example of the singer objecting to the interruption of his career; I would say that there is something amiss with a concept of conscience that allows for this to be called ‘*conscientious* objection’. What would be gained by accepting such a concept, except confusion? This evidently has a practical side as well: if the objection of the singer must be labelled ‘conscientious objection’, then freedom of conscience is meant for this kind of case as well. It seems to me that Luhmann’s idea of freedom of conscience loses much of its practicability as a legal principle here. Add to this Luhmann’s mislocation of the importance of appeals to conscience, which is due to his psychologization of such appeals, and it will be evident that, especially if we wish to understand conscientious objection, we need to go beyond Luhmann.

#### 12.4. HOW TO UNDERSTAND FREEDOM OF CONSCIENCE

We have seen how the legal principle of freedom of conscience arose and developed historically, with philosophical reflection on the notion sometimes in the vanguard, sometimes lingering behind. We have seen how, in its meaning of religious freedom, it became superfluous due to the (virtually)

complete separation of church and state. Freedom of conscience arose as a subjective right due to the separation of law and morality. That morality and law are separated means that they can clash. In the twentieth century, this often took the form of a conflict between an individual and the state. This, in turn, usually occurred in the form of conscientious objection, for instance against military conscription. At present this is still an issue in many countries, though not in the Netherlands, where the system of military conscription was suspended in 1997. There are, however, many other contexts in which conscientious objection occurs. People may conscientiously object to undergoing (or, from the other side: giving) certain medical treatments, or because they cannot agree with company policy; policemen may refuse to take action against participants in a certain protest march; a civil servant may conscientiously refuse to marry a gay couple. This is when people invoke the support of the principle of freedom of conscience. From the side of the judges, it is an absolute necessity to keep the principle manageable and applicable. With both conscience and freedom of conscience being formal principles, a solution has to be found for the problem of subjectivity. In view of the variant of the problem of subjectivity I commented on in footnote 42, it is clear that judges need to have criteria on the basis of which they can decide whether the case at hand is really a case of conscience or not – after which, of course, they still have to decide whether to concede to the appeal or not.

I have brought forward Luhmann's approach to conscience and freedom of conscience as the most valuable approach available at this time. He understands freedom of conscience as a mechanism by which the social system alleviates pressure on itself, by means of alleviating (or entirely removing) the pressure on personal systems – a pressure which, would it rise too high, could inflict serious damage on the social system. In principle, leaving aside Luhmann's view of conscience or assuming that we have corrected for what I take to be flaws in his conception of conscience, I believe this is a valid way of understanding freedom of conscience.

When I ask how we should understand freedom of conscience *now*, I am looking for an answer that goes beyond the mere recognition that it is a legal principle, or a subjective right – which are two sides of the same coin. Nor am I interested here in 'freedom of conscience' as a symbol. What I am looking for is a metajuridical understanding of the legal principle. Luhmann's view certainly goes beyond the superficial level; his is a metajuridical, not a juridical understanding. His approach reveals a certain aspect of freedom of conscience, and therefore helps us understand it. By speaking of an 'aspect', I indicate that the question of this section allows of multiple answers. Luhmann provides us, so it seems, with a *pragmatic* understanding of freedom of conscience. I believe that a more principled understanding would be equally valid; before presenting such an understanding, however, I would like to nuance the pragmatism of Luhmann's notion of freedom of conscience.

This seemingly pragmatic device, explained in the somewhat clinical terms of sociological systems theory, must have a non-pragmatic background. For Luhmann, freedom of conscience protects personal systems, and by doing so it protects the social system as well – which is why the social system contains a mechanism like that of freedom of conscience. The stability of the social system depends on the stability of personal systems, and personal systems depend, for their continued existence, on the continued existence of the social system. In itself, this seems to be a circular argument. The only way out of the circle, is to recognize that it presupposes a ‘primordial’ *concern*; neither the preservation of personal systems nor that of the social system can be important without there being a basic concern for this preservation. In fact, as Luhmann would undoubtedly admit, freedom of conscience presupposes concern of a much less basic nature too. What Luhmann provides is a bare bones understanding of freedom of conscience, which is precisely for that reason very illuminating – much like an x-ray is.

I have stressed that I see it as a merit of Luhmann’s conception of freedom of conscience that it has a strong basis in an articulate concept of conscience. To a certain extent, however, the weaknesses of Luhmann’s concept of conscience will also be those of his understanding of freedom of conscience. I say ‘to a certain extent’, because in its bare-bones form as presented above, Luhmann’s conception of freedom of conscience leaves room for modifications in his concept of conscience. Nevertheless, while recognizing Luhmann’s view of freedom of conscience as legitimate and illuminating to a certain extent, I would like to counter its one-sidedness by presenting my own interpretation, which is directly related to my own concept of conscience. Luhmann may be right in asserting, from his functionalist perspective, that freedom of conscience fulfils a negative rather than a positive function, but he mislocates the importance of appeals to conscience – this has to do with conscience itself, rather than with psychological damage that is contingent upon being forced to act according to conscience.

My own interpretation of freedom of conscience is twofold, as one can approach freedom of conscience from the perspective of the state or the law (a metajuridical perspective), or from the perspective of the individual.<sup>57</sup> From the latter perspective, given my definition of conscience as a concerned awareness of the moral quality of our own contribution to the process of reality, including our own being, freedom of conscience might be defined as the freedom to shape one’s life in accordance with this concerned awareness. Concern implies that one takes an active interest in things; freedom of conscience cannot therefore be limited to a freedom from

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<sup>57</sup> This twofold interpretation underlies the distinction, in chapters 13 and 14, between aspects of conscientious objection on the personal-experiential level and those on the public level.

inquisition. It is, however, limited by other principles and rights. My interpretation of freedom of conscience from the other perspective is not new, either; it was expressed by humanists and by Locke, among others. Richard Bäuml expresses a similar view, though I do not accept the rest of his theory.<sup>58</sup> Given my concept of conscience, the most consistent meta-judicial interpretation of the legal principle of freedom of conscience would be that it is a *recognition of the non-absolute character of positive law*.<sup>59</sup> Another way of putting this is that by acknowledging freedom of conscience a system of law recognizes the element of contingency in its nature, a societal order recognizes its limits. At the same time these limits are recognized, they are revealed. For instance, a state that acknowledges freedom of conscience is a state that can only play a limited role in the moral education of its members – arguably something with a downside as well as an upside.

The non-absoluteness of positive law is not met by the absoluteness of conscience – except, perhaps, for a *subjective* absoluteness; and it need not be. Freedom of conscience does not imply a view of conscience as a source or medium of higher truth. For Luhmann and many others, it has nothing to do with truth. In my view, in line with my concept of conscience, freedom of conscience implies (and is by many taken to imply) the *possibility* of a truth-relation between conscience and reality – the latter meaning: that part of process in which the individual in question is more immediately involved. Without this implication, there is no reason for attaching any special value (as most people, in fact, do) to conscience or freedom of conscience. It makes sense to speak of the dignity of an idea or principle; to speak of the dignity of a mechanism, however useful, would be to stretch the meaning of words beyond its limits.

## 12.5 CONCLUDING REMARKS

The legal principle of freedom of conscience, and legal provisions for conscientious objection, arose at least in part in answer to the problem of order. Freedom of conscience serves political stability. The subjectivity of conscience has long been perceived as a threat to that stability, but with Luhmann we can safely conclude that it need not be a problem at all if adopt a more formalistic approach to conscience. What we must not adopt is his psychologizing approach to conscience and appeals to conscience. That freedom of conscience supports political stability does not mean that it is important for that reason alone, or even primarily; similarly, that the frustration of a person's conscience can lead the personal system to become

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<sup>58</sup> Eckertz (1986), 257.

<sup>59</sup> And I believe this might be extended so as to include the dominant morality, which, in the end, determines whether appeals to conscience are judged to be reasonable or unreasonable.

unstable and break down, does not mean that legal provisions for conscientious objection derive their importance from the psychological damage they prevent. The aim of part III is to come to an understanding of conscientious objection that is informed by the present chapter and the foregoing chapters, but locates the importance of conscientious objections in the right place. Only by doing so will we be able to formulate a philosophical foundation of conscientious objection.





## **Part III**



## Transition to part III: Conscientious objection

A case of conscientious objection lay at the beginning of this study, which searches for a philosophical foundation for conscientious objection. It took a while, but we have now arrived at the part of the book that treats of conscientious objection. Parts I and II of the book come together in this part. One needs to know how to understand ‘conscience’, if one wishes to understand conscientious objection. Legal provisions for conscientious objection are an embodiment of freedom of conscience; a historical understanding of the main problem(s) adhering to the principle of freedom of conscience deepens one’s insight in conscientious objection, both as a legal principle and as a practice. Contemporary theories of conscientious objection are largely responses to the problem of order in its two dimensions: political order, and order in the minds of men. They have focused especially on the second dimension, which I have also called the problem of subjectivity. This is not surprising, since the institutionalization of conscientious objection that took place in Western countries in the course of the twentieth century itself constitutes a solution to, or at least a way of dealing with, the first dimension of the problem of order.

Niklas Luhmann’s work is a clear exception: his theory deals with both dimensions of the problem of order. The dimension of political order shows up in Luhmann’s theory in the form of the stability of the social system, to the preservation of which legal provisions for conscientious objection are a means. To accommodate conscientious objections means that one relieves the pressure on personal systems; this way, the pressure on the social system is also diminished. The stability of the social system depends on the stability of personal systems and their immediate social environments. The latter is at stake when someone faces a crisis of conscience; when this person is faced with a demand (or social duty) to do something that he or she cannot do without losing their identity – an identity that was formed in large part in response to a social demand for consistency. For the sake of both this person and the stability of the social system, it is best to allow him or her to be consistent; that is, to allow the person not to violate his or her conscience. What this conscience says is irrelevant to Luhmann; hence, I said in chapter 11, the problem of subjectivity is not a problem for Luhmann at all. What matters is whether an objection is conscientious or not, and no substantial criteria are needed to determine this. For Luhmann, conscience is not a certain set of principles, or a drive towards a defined good, but an identity-preserving function of the personality. *The* question of conscience is: ‘Can I do this and still be me?’<sup>1</sup>

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<sup>1</sup> Older views of conscience tended to focus on the content of conscience, and conscientious objections were therefore seen as liable to evaluation on the basis of

But instead of saying that the problem of subjectivity is not a problem for Luhmann at all, there is also another way of looking at it. The problem of subjectivity is the problem of order in people's minds. 'Disorder' in people's minds poses, or can pose, a problem for the state. It is from this perspective that we have looked at this dimension of the problem of order up to now. Luhmann's view invites a slight change of perspective; it is the confrontation with the state that may *cause* 'disorder' in the mind of a conscientious objector. This is another kind of disorder; it is not disorder as it would have been understood in the seventeenth century, where a disordered mind was a poorly informed, unreasonable, or obstinate mind. The disorder potentially caused in the mind of a conscientious objector by the confrontation with the state is a *psychological* 'disorder', not an epistemological one. This is why the stability of the personal system plays such an important role in Luhmann's theory. The conscientious objector is under severe mental stress; the theoretical corollary is that the strain he or she is under becomes a measure of conscientiousness. This is an undesirable feature of many recent theories of conscience and conscientious objection, and I will comment on this psychologization of conscience in the coming chapters.

In the following, I will not engage in a debate with a host of theories of conscientious objection. Some will pass in review, of course, and Luhmann's theory in particular informs my own approach, highly different though it is. Like Luhmann and others, I have recognized the need for a formalistic approach to conscience. The symbol of conscience is a rather formal framework, which accommodates a great plurality of concrete symbolizations of conscience. My fluid concept of conscience is also highly formal. But in my case, the formalism ends at a certain point. Conscience is a moral phenomenon, in the broadest sense of the word 'moral'; it is characterized by a concern for 'the good life' and 'being good' that expresses ultimate concern. I have drawn (and will in the following chapters draw) attention to the intentionality of conscience because forgetting this easily leads to a mislocation of the importance of conscience. Its importance derives from ultimate concern; but concepts of conscience that forget the intentionality of conscience are apt to locate it in the level of stress with which someone would be faced if (s)he were forced to act against his or her conscience. With a view of conscience as expressing ultimate concern, my understanding of conscientious objection is necessarily different from Luhmann's. Some objections that he would (have to) label 'conscientious' would not be recognized as such on the basis of my approach. But, as I will also argue in the following chapters, there is more to conscientious objection

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substantial, that is, content-regarding criteria. Hence Brodhurst (1899), 31: "[I]s the State to bow to the conscientious belief which it has good grounds for deeming erroneous, to the probable injury of some of its members?"

than being an objection on grounds of conscience. Conscientious objection can be viewed from different perspectives; it is a legal principle, but also a practice of conscientious objectors. From both perspectives, a number of aspects of the phenomenon are revealed. Chapter 13 discusses those aspects that are not only central to conscientious objection, but also central in identifying conscientious objection, and in distinguishing it from other kinds of objection. In chapter 14 I broaden the perspective to discuss no less important aspects that are, however, less directly relevant to identifying cases of conscientious objection; these concern the relations between conscientious objection, the state, and the law.

My goal, then, is not to arrive at a unified definition of conscientious objection, but to draw attention to a number of important aspects of conscientious objection as we understand it today – aspects that are also, and often more clearly, revealed in pre-modern cases of conscientious objection (as we may, somewhat anachronistically perhaps, call them). The multi-dimensional understanding of conscientious objection thus gained will inform the two case studies discussed in chapter 15, but these will also provide some new insights, and deepen the understanding of conscientious objection gained so far. Finally, these three chapters (informed by the rest of the book) will provide the material on the basis of which a philosophical foundation for conscientious objection will be formulated in chapter 16, the concluding chapter of the book.

Just now, I suggested that to speak of pre-modern cases of conscientious objection might be an anachronism. The reason for this is that the term ‘conscientious objection’ was coined in a modern (late nineteenth-century) context, to refer to people who, on grounds of conscience, refused to comply with a demand made on them by the state, expressed this objection in a certain way, and so on. (The identifying characteristics of conscientious objection are discussed in chapter 13.) According to the *Oxford English Dictionary*, the first documented use of the term ‘conscientious objector’ stems from 1899.<sup>2</sup> I have also been able to trace it back to that

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<sup>2</sup> The OED (1989) gives 1899 and refers to ‘objector’ for the reference; there, we are referred back to ‘conscientious 1b’. The OED (1978), however, does provide the reference under ‘objector’, namely to *Whitaker’s Almanac* 400/I: “A conscientious objector to vaccination can .. escape all penalties.” The word ‘conscientious’ originates in the early seventeenth century, and is derived from the French ‘consciencieux’, which in turn comes from Latin ‘conscientiosus’ (*Oxford English Dictionary*, 1989). ‘Conscientious objection’ understandably precedes ‘conscientious objector’ somewhat. Moskos and Chambers (1993), note 33 to page 12, remark that “Peter Brock has traced the term ‘conscientious objection’ to military service or war to 1846, when it was mentioned several times by pacifists, antimilitarists, and political radicals in their relatively short-lived campaign against compulsory militia service and recruitment for the British Army”. They refer to Peter Brock, *Freedom from War: Nonsectarian Pacifism, 1814-1914*, University of Toronto Press, Toronto,

year.<sup>3</sup> The earliest references to ‘conscientious objectors’ I could find (with a reasonable effort) concern objectors against compulsory vaccination (of their children).<sup>4</sup> The terms ‘conscientious objection’ and ‘conscientious objector’ become widespread during World War I. Since then, the association of conscientious objection with military conscription has become virtually automatic. Cain describes conscientious objection as ‘refusing (military service) for reasons of conscience’.<sup>5</sup> Moskos and Chambers begin their introductory essay to *The New Conscientious Objection* thus:

“If the citizen soldier can be traced back to the origins of the modern Western state, an equally durable social type is the conscientious objector to military service. Conscientious objection is at the core of the individual’s relationship to the state because it challenges what is generally seen as the most basic of civic obligations – the duty to defend one’s country.”<sup>6</sup>

Had the hopeful reader expected to find all kinds of conscientious objection in *The New Conscientious Objection*, this hope immediately proved to be vain. Merriam Webster’s dictionary, to turn to another kind of source, defines conscientious objection as “objection on moral or religious grounds (as to service in the armed forces or to bearing arms)” and a conscientious objector as “a person who refuses to serve in the armed forces or bear arms on moral

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1991, 319, note 47. I have found a rather unusual use of the term in Bray (1869), 411: “It is a cow’s conscience that makes it want to toss every dog it sees, from the inherited effect of dogs’ ill conduct towards the cow’s paternal ancestors in bull-baiting, which so universally prevailed in England fifty years ago. A cow has a *conscientious objection* to dogs in general, and she tosses her head every time she sees one, very much as some young ladies do at fast young puppies of another race.” (My italics.) A use of the term that is in line with later and present-day use of the term can be found, for instance, in “The Uniformity of the Census of Australasia in 1891” (1890), 315, where it is said that in returning the census questionnaire people should be allowed to write ‘object’ where asked about their religious denomination, if they have a conscientious objection to state their religious belief. Another early use is Ritchie (1891), 141. (The OED [1989] does not trace ‘conscientious objection’ back very far; from the nineteenth century, it mentions ‘conscientious deliberations’, ‘conscientious scruples’ and other similar terms. The first reference to ‘conscientious objection’ it presents is from 1916.)

<sup>3</sup> See Brodhurst (1899), 24.

<sup>4</sup> See Brodhurst (1899); the description of Paul (1903) in “Notes on Economical and Statistical Works” (1903), 399; Dudfield (1905), 13. It is clear from the latter that a ‘conscientious objector’s clause’ existed in British law. Paul (1903) is described in the “Notes on Economical and Statistical Works” as “[a] pamphlet, written by a ‘conscientious objector,’ setting forth the views of his party, and endeavouring to show the impracticability of compulsion.” That ‘conscientious objector’ is placed between parentheses testifies to the relative novelty of the term.

<sup>5</sup> Cain (1970), 275.

<sup>6</sup> Moskos and Chambers (1993), 3.

or religious grounds”.<sup>7</sup> Although this automatic association of conscientious objection with compulsory military service is still rather persistent, it is now also widely recognized that the phenomenon cannot be narrowed down to this sphere alone, and that there are conscientious objectors in many other areas – medicine being one of the most conspicuous.<sup>8</sup> Whatever the context, however, the term ‘conscientious objection’ usually refers to a fairly common phenomenon in modern democratic societies. In that sense, to speak of Thomas More or Socrates as a conscientious objector is an anachronism.

In a broader sense of the term ‘conscientious objection’, however, both Socrates and More are paradigm examples of conscientious objectors. They objected to a ‘state’ demand on grounds of conscience, and expressed this objection in a characteristic way, with the behaviour that is typical of conscientious objectors. Their cases, as well as other historical examples, will be helpful in determining the prime characteristics of conscientious objection, some of which are somewhat obscured by the procedural manner in which conscientious objection is often dealt with in modern democratic societies.

Throughout this book, and in part III in particular, I have tried to emphasize the unity and commonality of the ‘religious’ and the ‘secular’ conscience, and hence of ‘religious’ and ‘secular’ conscientious objection. I recognize what is ‘new’ about conscientious objection today, but like Moskos and Chambers people tend to exaggerate the difference between ‘old’ or ‘traditional’ and ‘new’ (‘secular’) conscientious objection. ‘Secular’ conscientious objection only poses a challenge to traditional concepts of conscience. It does not undermine the philosophical foundations of conscientious objection. These have to be found in a view of conscience that encompasses both ‘secular’ and ‘religious’ consciences.

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<sup>7</sup> The OED (1989) defines a conscientious objector as “one who refuses to conform to the requirements of a public enactment on the plea of conscientious scruple; *esp.* such an objector to military service”, thereby recognizing a narrow and broad use of the term. The C.O. to military service is also popularly called a ‘conchy’. (This definition of a conscientious objector first appeared in the supplementary volume to the 1978 edition.)

<sup>8</sup> For a conscious limitation of the concept to the military sphere (or a conscious adoption of its common narrow interpretation), see Harries-Jenkins (1993), 67.





## 13. Identifying conscientious objections

“Waar ik op zit te wachten zijn gewetensbezwaren! Wat dat zijn? Ha ha!  
Wat ik zeggen ga klinkt hard. Máár: het slaat de spijker op zijn kop.  
Of u doden kunt of niet.”<sup>1</sup>

SONG TEXT BY DON QUISHOCKING (1974)

### 13.1. INTRODUCTION

What is conscientious objection? How do we identify it; that is, how do we identify a certain case as a case of conscientious objection? These are indeed two different questions. To know how to identify something is not the same as knowing what it is in all its aspects. If one’s interest is with the identification of conscientious objection, certain aspects of the phenomenon will step into the foreground rather than others. Some things may be identifiable by something that is far from essential to them. In the case of conscientious objection, however, identification entails that one is able to tell the essential difference between conscientious objections and other kinds of objection.<sup>2</sup> The difference lies not in superficialities. In this chapter, then, I approach the first question (what is conscientious objection?) through the second (how do we identify it?). My immediate interest is with the identification of conscientious objection. Against the background of my approach to conscience, certain identifying aspects of conscientious objection will light up. This is an unusual phrase: ‘identifying aspects’. Two reasons underlie my preference for it instead of, for instance, ‘identifying characteristics’: 1) it avoids the reifying tendency of phrases like the latter; conscientious objection is not a ‘thing’ with a number of characteristics; 2) it draws attention to the role of the subject, of perspective. Because my immediate interest in this chapter lies with the identification of conscientious objection, I will mainly be concerned with identifying identifying aspects – I will come to the problem of how to do this shortly. The identifying aspects found *can* then serve as criteria to determine whether a particular case is a case of conscientious objection or not. In practice, this will often come down to a verification or falsification of pre-existing intuitions. It is not generally the case that we have no clue whatsoever about whether something constitutes a conscientious objection or not, and therefore apply a set of criteria to determine what is the case. But there may be doubtful cases, in which the aspects discussed below may help. However, the identification of identifying aspects serves another purpose as well: it allows us to point out

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<sup>1</sup> “What I am waiting for is a conscientious objection! What that is? Ha ha! What I’m about to say sounds harsh. But: it hits the nail on the head. (It’s) Whether you can kill or not.”

<sup>2</sup> This, at any rate, is how I will understand ‘identification’.

the essential difference(s) between conscientious objections and other kinds of objection. This means that the present chapter is an important step in arriving at a philosophical foundation of conscientious objection.

Things are often easier in theory than in practice. This surely holds true in the case of conscientious objection, which is far easier to contemplate than to put into practice. In a more specific sense of the word ‘theory’, however, the theory of conscientious objection has always been fraught with difficulties as well. This is reflected in the flaws theories of conscientious objection tend to have. Much of the theory of conscientious objection up to now has, for instance, overstressed the intellectual aspect of it, and in conjunction with that its rational (and eloquent) articulation. Hence Don Quishocking’s sarcastic representation of a member of the committee evaluating applications for conscientious objector status: “Didn’t you just say you’ve read Marx and Engels, but tell me honestly, do you understand all of what they say? Don’t you merely have secondary education?”<sup>3</sup>

Theorists of conscientious objection have often tried to arrive at a single definition of the phenomenon. Only on the face of it, however, is conscientious objection easy to define. In Dutch literature, one finds definitions like the following:

“We speak of conscientious *objection* when someone feels compelled in conscience not to fulfil a legal obligation. Conscience then incites to inaction.”<sup>4</sup>

“A conscientious objection [is] an objection (...) that an individual has against an action that is required of him, because he feels obliged in conscience to act otherwise in the concrete situation.”<sup>5</sup>

The latter definition is immediately qualified in a most curious manner, by the statement that this is only one definition, an ‘agreement’, and that other agreements are also possible. I would agree that no definition captures all aspects of conscientious objection, yet there has to be more to a definition than its being agreed upon.

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<sup>3</sup> My (rough) translation of: “Zei u net niet dat u Marx en Engels hebt gelezen máár zeg eens eerlijk snapt u alles wat daar staat? U hebt toch enkel MULO?”

<sup>4</sup> Holland (1989), 23: “We spreken van *gewetensbezwaren* indien iemand zich in geweten gedwongen voelt een wettelijke verplichting niet na te leven. Het geweten roept dan op tot een niet-handelen.” (All translations are my own, unless otherwise stated.)

<sup>5</sup> *Gewetensbezwaren vragen aandacht*, 12: “een gewetensbezwaar [is] een bezwaar (...) dat een individu heeft tegen een van hem verlangde handeling, omdat hij zich in geweten verplicht voelt in de concrete situatie op een andere manier te handelen.” (Original in italics.) The CDA is the major Christian-democratic political party in the Netherlands.

In British and American literature, one encounters similar definitions of conscientious objection:

“To refuse (military service) for reasons of conscience.”<sup>6</sup>

“[Conscientious objection] springs from a person’s refusal to do, or to abstain from doing, what he believes he ought not to do or to do, even though the law commands the contrary, and this because he believes his very integrity as a moral agent is involved in disobeying the law.”<sup>7</sup>

This last definition goes beyond Cain’s definition, in that it avoids the circularity involved in defining conscientious objection as objection on grounds of conscience. Definitions like the above draw attention to two aspects of conscientious objection that are most clearly separated by Carl Cohen, who gives us *two* definitions of conscientious objection:

“Conscientious objection may be viewed as a legal pressure valve, deliberately devised to relieve the tension between deeply held moral convictions and the demands of the law, when that tension becomes extreme.”<sup>8</sup>

“[B]y conscientious objection we mean simply objection that is based truly and deeply upon moral convictions.”<sup>9</sup>

The latter definition is more reminiscent of the first three definitions recorded above, although it does not refer to conscience, but to moral convictions instead. In fact, reading on, we find the following supposedly rhetoric question: “What is ‘conscience,’ after all, but our blanket name for the personal governing principles to which a man is ultimately committed?”<sup>10</sup>

The above definitions point to two aspects of conscientious objection. Conscientious objection is always defined by reference to

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<sup>6</sup> Cain (1970), 275. This definition of conscientious objection (or conscientious refusal, as John Rawls also calls it, which is the same thing) is abstracted from the following sentences: “Since the era when Christians became reluctant to march to the drums of Roman legions, governments have had to face the problem of citizens who refuse military service for reasons of conscience. In the eyes of many, the right to conscientious objection is as difficult to justify as the right to revolution.” Cain is one of many who narrow down conscientious objection to conscientious objection to military service. Unlike other authors, he does not express his awareness of doing so. An author who does *not* limit conscientious objection to conscientious objection to military service is James Childress. See Childress (1979).

<sup>7</sup> McCloskey (1980), 536.

<sup>8</sup> Cohen (1968), 269. This view is similar to that of Niklas Luhmann.

<sup>9</sup> *Ibid.*, 276.

<sup>10</sup> *Idem.*

conscience on the one hand, and the relational aspect constituted by the public objection (in a legal context) on the other hand.<sup>11</sup> Both aspects have to be adequately dealt with, in order to come to an adequate understanding of conscientious objection. In relation to this, we might point out a distinction between conscientious objection as a *private* phenomenon, and conscientious objection as a *political-juridical* phenomenon. Vegetarianism can be an example of conscientious objection as a private phenomenon. A vegetarian may conscientiously object to eating meat, yet he may do so in private. Here, the stress lies on the *conscientiousness* of the objection, not on the form that objection takes. It could also be called conscientious objection as a *moral* phenomenon. However, as a political-juridical phenomenon, conscientious objection *should* also have a moral aspect. In fact, however, the institutionalization of conscientious objection has led to an increasing distance between the moral and the political-juridical aspect of conscientious objection. Hence, with conscientious objection as a political-juridical phenomenon, the emphasis lies more on the relational aspect of the public objection in a legal context, than on the experience of conscience underlying the objection. To correct this, while in this chapter the focus lies on conscientious objection of the public form, that is, on the political-juridical phenomenon of conscientious objection, and not on phenomena like vegetarianism (that constitute a form of conscientious objection in their own right), the moral reality of conscientious objection will not be lost sight of. In fact, the first thing to do when embarking on an analysis of conscientious objection is to make clear what one means by ‘conscience’.

Carl Cohen’s definition of conscience will not do. It may often be used as a blanket name for all sorts of things, but in the first part of this book I believe to have shown that conscience has always been something other and more than that. To see conscience as a blanket name for ‘personal governing principles to which one is ultimately committed’ is a sign of philosophical forgetfulness, the product of a history that has forgotten itself. It is also an example of reification, of the illegitimate indicative use of the word conscience. Furthermore, with its reference to ‘principles’ it is an example of an overly intellectual understanding of conscience. What Cohen did get right is the element of ultimate commitment, or, as I have called it, ultimate concern. As an alternative to views like Cohen’s, I have proposed that we see conscience first of all as a symbol, engendered by a certain class of experiences. I have identified three core elements of the symbol of conscience, these being: 1) the element of ultimate concern; 2) the element of the witness; and 3) the element of intimacy. The element of ultimate

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<sup>11</sup> Cf. also Harries-Jenkins (1993), 67: “In essence, conscientious objection is the articulation by an individual of a set of highly internalized attitudes in response to a particular stimulus.” He then goes on, however, to narrow the concept down to conscientious objection against military service.

concern typically comes in one of two guises: that of authority or that of inspiration – they are, however, not necessarily mutually exclusive. The element of intimacy also tends to manifest itself in one of two forms: secrecy and privacy.<sup>12</sup> On this basis, I constructed my own (fluid) concept of conscience. I proposed to view conscience as a mode of consciousness.<sup>13</sup> As a ‘definition’ of conscience, I suggested that *conscience is a concerned awareness of the moral quality of our own contribution to the process of reality, including our own being.*

That conscience first of all needs to be understood *symbolically* entails that we must also recognize the symbolic element in conscientious objection.<sup>14</sup> An appeal to conscience in the form of conscientious objection must be seen as a symbolic expression of ultimate concern, of the experience of transcendent value in relation to the objector’s own concrete situation.<sup>15</sup> The dominant present-day understanding of conscience, however, is such that the symbolic character of appeals to conscience will often go unnoticed, both by the appellant and his audience. The procedural manner in which cases of conscientious objection are dealt with, especially in traditionally lenient countries, aggravates this effect.<sup>16</sup>

Herein lies a reason for looking at older examples of conscientious objection with a view to an analysis of the most important aspects of conscientious objection.<sup>17</sup> As I said before, I will be primarily concerned with those aspects that stand out as identifying characteristics of conscientious objection. Once in this chapter, and in chapter 14 as a whole, I will look at

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<sup>12</sup> See chapter 1.

<sup>13</sup> See chapter 8.

<sup>14</sup> This is an uncommon approach, but I have found a precedent in Rabinowitz (1951), 364: “In only four states is there law requiring schools to make the course in military science compulsory. In the remaining states it is possible to establish a rational system for recognizing the claims of all those who assert they are conscientious objectors regardless of the symbol being invoked by the individual as a sanction for his behavior; there is no need to discriminate between the religious and non-religious conscientious objector.” (See also *ibid.*, footnote 19, where Rabinowitz invokes psychological support for this view.)

<sup>15</sup> It is worth noting that in the *U.S. vs. Seeger* case the Supreme Court defended its liberal interpretation of the ‘Supreme Being’ clause of the 1948 Selective Service act by reference to Tillich’s work. On Tillich’s view of religion and faith, Seeger’s objections were religious in character in the sense that they related to an ultimate concern. See Cain (1970), 301; on the same, but without mention of Tillich, cf. Sherk (1968), 20-21.

<sup>16</sup> Traditionally lenient countries are The Netherlands, Belgium, Germany, Scandinavian countries, and Great Britain. See Mellors and McKean (1982), and (for the reference to Britain) Cain (1970), 288: “[I]t is probably easier to challenge the authority of the state and get away with it in England than in any other European country.”

<sup>17</sup> By which I do not intend to say that contemporary cases are *by definition* less suitable for such an analysis.

aspects that are less immediately visible, though certainly not less central to the phenomenon. The main question in the present chapter is: how do we recognize or identify cases of conscientious objection?<sup>18</sup> I will answer this question not by giving a precise definition of conscientious objection, but by discussing a number of central aspects of conscientious objection that (against the background of my approach to conscience) stand out clearly, and so can serve as identifiers of cases of conscientious objection.

These identifiers may lie (predominantly) on a personal-experiential level, or on a public level. There is no solid border between these levels, but in most cases it will be clear whether an aspect belongs to the public side of conscientious objection, or on the personal-experiential side.

How do I come by these aspects? If I answer: from an analysis of cases of conscientious objection, the question begged is: “How can you identify these cases, before knowing what conscientious objection is?” It is a familiar problem in the history of philosophy. Heidegger struggled with the same problem in *Der Ursprung des Kunstwerkes*.<sup>19</sup> (‘Struggled’ is perhaps too much to say; he recognized the problem and dealt with it quite quickly and confidently.) Heidegger wished to know the origin of the work of art; that is, the source of its essential being. The question regarding the origin of the work of art, Heidegger explains, becomes the question as to the essence of art. How do we come to know the essence of art? By looking at works of art; by making a list of them and comparing them with a view to what they have in common. But how can we recognize works of art? Because we know what art is. There is no way out of this circle.

“So müssen wir den Kreisgang vollziehen.”<sup>20</sup>

Which means that he starts with what is commonly known: “Kunstwerke sind jedermann bekannt.”<sup>21</sup>

Though I acknowledge that there is a circularity here, as in the case of conscientious objection, the circularity as it is here presented is (as Heidegger would recognize) misconstrued. It is as wrong to suggest that we need an analysis of the comprehensive collection of all works of art to know what art is, as it is nonsensical to say that we need to be able to apply a fully articulated concept of art if we are to identify works of art. The mistake is in the level of articulacy that is supposedly required of our concept(ion) of art to be able to identify a work of art as a work of art. No one would demand that we come up with a fully articulated concept of cake, before allowing us

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<sup>18</sup> With the qualification made earlier still in force, that the focus is on conscientious objection as a *political-juridical* phenomenon (*with* its moral dimension).

<sup>19</sup> Heidegger (1977), 8.

<sup>20</sup> *Ibid.*, 9.

<sup>21</sup> *Idem.*

to continue with our identification of something as a piece of cake. With such trivial matters, we assume that people know what cake is. Why would it be different with art? Heidegger does not seem to think there is a difference; we all know works of art. The problem arises when we engage in an attempt at defining a concept; that is, when the ideal of precision arises. It then seems that we need an articulate concept of something, *before* being able to identify an item as an instantiation of the concept. But this is a misconception. The mistaken idea is that articulacy can only originate in articulacy; precision only in precision. I suggest that we think of articulation as a process, starting out from inarticulacy, and aiming at as high a degree of articulacy as the subject allows. This means that we start (in Aristotelian fashion, Voegelin would say) with common intuitions regarding our subject matter. Individually, we start from our own preconceptions of, in Heidegger's case, art. (Repeated) confrontation with items belonging to the same class (or 'family') results in the creation in the mind of a preconception of such items, that enables us to identify items as belonging to that class when confronted with them in the future. This preconception is inarticulate, but forms the basis for our articulate judgements. The learning process here is not one of gradually coming to know an eternal truth (what art is, for example) in full detail; rather, it is part of the process of acquiring a language and linguistic skills. 'Art' is a word. As all words, it is applied in certain ways, in certain contexts, in a particular linguistic community. Learning a language, participating in this community, we form preconceptions of the meanings of words. Thus, we end up in the situation that 'we all know works of art'. But this is not *precise* knowledge; it is merely the obvious and legitimate starting-point for analysis.<sup>22</sup>

So in setting out to analyze the phenomenon of conscientious objection, I inevitably start from my own preconception, leading me to examples of conscientious objection. Then there are the common intuitions and associations expressed by others; things like martyrdom and heroic stands, but also the image of peace-loving softies with beards and sandals. The term itself, furthermore, being built up out of two basic elements ('conscience' and 'objection'), suggests certain obvious criteria for the identification of cases of conscientious objection. In fact, as we have seen, many definitions do not venture beyond the safety of these basic elements. All the things mentioned here (and more) coalesce to create an idea of conscientious objection, different aspects of which are analysed below. This

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<sup>22</sup> The reason I proceed in this manner in the case of conscientious objection, while having chosen a very different approach with respect to conscience, is that the former is regarded here primarily as a social (more precisely, a political-judicial) phenomenon, whereas conscience is regarded as primarily an experiential phenomenon, belonging to intrinsic, rather than social reality – which does not mean that conscience *could not* be regarded as part of the latter, as a meme, for instance.



analysis, without resulting in a clear-cut definition of conscience, will allow closure (though never permanent closure) of the no longer vicious circle by returning to common intuitions and common uses of the term ‘conscientious objection’, sharpening and possibly criticizing these. It may turn out that some of these intuitions or uses of the term were incoherent, and hence it may be that some cases thought to be examples of conscientious objection will have to be excluded from that category. I merely state this for the sake of completion, and as a theoretical possibility; I will not search for illustrations of this possibility.

My analysis, then, attempts to provide the best possible interpretation of what people mean when they speak of conscientious objection, either in their own appeal to conscience, or with regard to that of others. It is not simply descriptive, though. I am first of all concerned with what we *can*, coherently, mean by the term (which means that I allow for the possibility that people sometimes mean things by a term that are incoherent); but secondly, and this is a normative element, I am concerned with how we *should* use the term if we want to use it coherently, and with as great a richness of meaning as the term allows. I believe, however, that we can derive the norm of use from actual use and common intuitions, combined with what we know about conscience and, somewhat less interestingly perhaps, objections – the whole being set against the background of the earlier parts of this book, regarding conscience and freedom of conscience. My analysis (in this and the following chapter), in other words, should be taken as the result of a process of articulation of the various inarticulate elements mentioned earlier, guided by my analysis of conscience and the central problems of freedom of conscience.

### 13.2. WHETHER ONLY CONSCIENTIOUS OBJECTION UNDERSTOOD AND EXPRESSED AS SUCH CAN BE IDENTIFIED AS CONSCIENTIOUS OBJECTION

Someone might say that a conscientious objection is simply an objection that the objector sees and presents as conscientious. But this is incorrect for two reasons: firstly, not all objections understood to be conscientious by the objector and presented as such *are* in fact conscientious objections; secondly, some objections that are not thought of as conscientious may very well be that. Here, I will discuss only the second point, as I believe the former (the possibility of self-deception) to be self-evident. This discussion concerns both the question whether people must experience their objections as ‘conscientious objections’, and the question whether objectors have to be label their objections as such for others to be able to speak of conscientious objection in their case. My focus will be on the latter, but people’s self-understanding underlies the way they express themselves.

The first question to ask, then, with a view to the problem of recognizing or identifying cases of conscientious objection, is whether the objection in question needs to be couched in terms of conscience. To be able to identify a certain objection as conscientious, is it necessary that the objector explicitly refers to his or her objection as a conscientious objection? Must the objector verbally refer to conscience, or verbally stress the conscientiousness of the objection? My answer to this question can be derived from what I have said in the first chapter, on the symbol of conscience. Just as it is very well possible to express an experience of conscience without recourse to the term itself, or to terms traditionally associated with conscience; that is, just as it is unnecessary for a certain (symbolic) expression to contain the term ‘conscience’ or an equivalent term to be able to be recognized as an expression of conscience, it is also immaterial whether a conscientious objection is explicitly phrased as such.

The above only holds, however, as long as a case is dealt with outside of the juridical sphere. A hospitalized Jehovah’s Witness, for example, may conscientiously refuse a blood transfusion without explicitly bringing conscience into play. She may say that she *cannot* receive a blood transfusion, because of her being a Jehovah’s Witness. The hospital staff will probably interpret this as a conscientious objection, and discuss the case among themselves as such – but that is exactly the point: a conscientious objection can be recognized as such without the objector’s explicit notification that hers is a conscientious objection.

A real-life example is provided by doctor Norman Heathcote, who visited St. Kilda, the extreme western part of the British Isles, in 1900.<sup>23</sup> “There is no need,” Heathcote wrote, “for them [the St. Kildans] to go through the form of saying that they are conscientious objectors. They simply refuse to allow their children to be operated on, and there is no more to be said.”<sup>24</sup> A couple of interesting aspects of conscientious objection are enclosed in this small remark. First of all, its connection with people’s identity comes to the fore. I have spoken of conscience in terms of ultimate concern; here, conscientious objection is associated with such ultimacy in the form of a way of life. The conscientious objection of the St. Kildans flows from the fact that to allow the doctor to operate on their children would violate who they are. It is quite likely that ignorance, and a related fear, played a part as well, but it would be too easy to dismiss their refusal as stemming from ignorance alone. Another interesting point to note, is that

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<sup>23</sup> St. Kilda is a small archipelago in the Atlantic Ocean, 45 miles to the west of the nearest island (Uist) of the Outer Hebrides, which are situated off the Northwestern coast of Scotland. It was inhabited for at least 1000, possibly 2000 years, until the evacuation of its last 36 inhabitants in 1930. The St. Kildans lived a harsh and simple life, depending mostly on seabirds for their subsistence.

<sup>24</sup> Quoted in Steel (1981), 53, from Norman Heathcote, *St. Kilda*, 1900.

formalized or institutionalized conscientious objection only makes sense when the objector is part of the same community that deals with the objection, and shares this community's way of life to a sufficient extent. In modern Western societies, this is usually (supposed to be) the case. Some groups, however, (Jehovah's Witnesses for example), have received a special status that allows them an easy passage through or around the formalities of conscientious objection to certain matters – in the case of Jehovah's Witnesses and members of other peace churches, this was and is often the case in connection with compulsory military service. In 1974, the Dutch Government granted Jehovah's Witnesses an unlimited delay of the duty to military service. The European Commission supports this provision with the following argumentation: "Members of Jehovah's Witnesses adhere to a comprehensive set of rules of behaviour which cover many aspects of every day life. Compliance with these rules is the object of strict informal social control amongst the members of the community. One of these rules requires the rejection of military and substitute service. It follows that membership of Jehovah's Witnesses constitutes strong evidence that the objections to compulsory service are based on genuine religious convictions."<sup>25</sup> The central argument here is the plausibility of the genuineness of conscientious objection by members of Jehovah's Witnesses. In my view, it makes more sense to say that the legal provisions created by the Dutch government are evidence of a pragmatically grounded recognition that the way of life of Jehovah's Witnesses is of such a nature, that it would be pointless to continue to demand of members of this group that they fulfil their military duties.

In practice, it *will* often be necessary for a conscientious objection to be expressed as such, in order to be eligible for legal recognition as a conscientious objection. In the case of conscientious objection to compulsory military service, a Dutch conscript had to formally apply for the status of conscientious objector. His application (both in writing and speech) was judged by a committee that advised the minister either to recognize or to reject it, and judged by its conformity with the legal requirements – the law speaks of 'grave/serious conscientious objections', which are taken to be "insurmountable conscientious objections against the personal fulfilment of military service in connection with the use of means of violence in which one can become involved through service in the Dutch army"<sup>26</sup> In the last years of conscription (that is, during the first half of the nineties), in a negative advice, the committee often referred to one or more of a standard list of three criteria the applicant might fail to meet: the objections 1) were to be conscientious; 2) were to be insurmountable; 3) were to relate to the use of

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<sup>25</sup> EurCom 11-10-1984, D&R 40, 207, quoted (in full, unlike above) in Vermeulen (1993), 89-90.

<sup>26</sup> Wet Gewetensbezwaren Militaire Dienst, 1978, art. 2.

means of violence as referred to in the law. A standard letter was used, with all three criteria on it, of which those that applied could be marked with a cross or a circle around the number.<sup>27</sup> This indicates the degree of formalization the process acquired in the course of time, partly under pressure of an increasing number of real and fake conscientious objectors.<sup>28</sup>

Because conscientious objection occurs more often in some contexts than others, it is hardly surprising that in contexts where conscientious objections are relatively often encountered, certain formal procedures have arisen that dictate how the conscientious objection should be made public. This goes both within organizations and in the case of conscientious objection against duties imposed by the state. Hence, some authors choose to employ a legalistic definition of conscientious objection. Rachel Barker, for instance, speaks of “the true nature of conscientious objection, that it is not a policy or a doctrine, but merely a status conferred upon an individual by the state while conscription is in force”.<sup>29</sup> She refers to conscientious objection to compulsory military service only, as this is the subject of her book. A conscientious objector, in this view, is merely someone on whom this status has been conferred. This is not the view I wish to take. Procedures like those regarding conscientious objectors to military service make it relatively easy for objections to pass as conscientious that are in fact far removed from any real experience of conscience. At the same time, truly conscientious objections that do not fit the procedure might go unrecognized by the authorities. The rationale behind such procedures does not concern me at this point. What is important here is that they are irrelevant to the identification of conscientious objection in the sense in which I employ the term. Identification would be easy if one said that anything the state identifies as conscientious objection *is* conscientious objection, and anything not so recognized is not. I choose a more difficult, but also more sensible approach. Whether the state (or the smaller organization in question) recognizes a certain objection as conscientious or not is beside the point. Whether the objector speaks of ‘conscience’ or not is equally beside the point. The basic question is whether we are dealing with an objection grounded in conscience.<sup>30</sup> On this point, therefore, what I have called conscientious objection as a political-juridical phenomenon does not differ from conscientious objection as a private phenomenon.

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<sup>27</sup> This can be seen in the remaining files of conscientious objectors in the Archives of the Ministry of Defence in Kerkrade (Archief van de Directie Dienstplichtzaken, from now on ADD).

<sup>28</sup> I will deal with conscientious objection to military conscription separately, in the next chapter.

<sup>29</sup> Barker (1982), 4.

<sup>30</sup> This is not all there is to conscientious objection, but, like I said, it is the most basic point.

As a final note I might add that even someone who rejects the label ‘conscientious objector’ for himself may still legitimately be recognized as one. Michael Walzer writes about Randolph Bourne, who “contemplates and then rejects the designation of himself as a ‘conscientious objector’. He doesn’t, indeed, want to fight, but it’s not the case that he ‘would be delighted to work up [his] blood lust for the business [of fighting], except that this unaccountable conscience, like a godly grandmother, absolutely forbids.’ What forbids his military service is ‘something that is woven into his whole modern philosophic feel for life.’ Bourne claims that his refusal is the act of a *person*, not of an ‘objective conscience’ suppressing the lower orders of the self. It is not his conscience that refuses but something deeper within, or more continually active across, or more pervasive throughout, his inner life.”<sup>31</sup> Bourne does not want to be called a ‘conscientious objector’, because he rejects what he takes to be the meaning of the term ‘conscience’. This need not and should not stop us from identifying him as a conscientious objector, in the sense of the term explained in this chapter.

### 13.3. CORE ELEMENTS OF THE SYMBOL OF CONSCIENCE AS INDICATORS OF THE CONSCIENTIOUSNESS OF OBJECTIONS

Now that I have stated what I, unlike some other authors, do *not* consider an identifying aspect of conscientious objection, (which means that I take it to be irrelevant in determining whether we are dealing with conscientious objection or not), I can continue with what I *do* take (arguably, at least) to be relevant criteria. These are of three kinds. The first kind is actually just one criterion, which is whether we are dealing with an objection or not. I will not discuss the concept of an objection here, but assume that we know what we mean by the term.<sup>32</sup> The second kind of criterion relates to the personal-experiential level; the third to the public level.

The present section deals with the criteria on the personal-experiential level. My suggestion here is that we take the presence of core elements of the symbol of conscience as indicators of the conscientiousness of an objection.<sup>33</sup> In the evaluation of a person’s objections, the fluid

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<sup>31</sup> Walzer (1994), 92-93.

<sup>32</sup> The relational aspect of an objection *will* figure in my analysis, in section 13.4.1.

<sup>33</sup> What this means, in fact, is that we look for elements of the symbol of conscience on the level of *expression* or symbolization. These elements, when they really are symbolic expressions of experience, and not mere hollow phrases, are also elements of the experience of conscience. The (sometimes) difficult task is to ascertain whether the presence of core elements of the symbol of conscience is not merely a verbal presence, in which case no real symbolization took place. This task is made slightly easier by the ‘evidence’ of identifying aspects on the public level – for instance, acceptance of the consequences (see 13.4.1). I assume that experiences of conscience will always find expression in such a way that at least some of the core

concept of conscience I have formulated may serve as a rough guide. In many cases, it may be enough to determine whether an objection can be called conscientious or not. Especially where this is not immediately clear, however, an analysis in terms of the core elements of the symbol of conscience will be helpful. Though it certainly cannot be said that the absence of one or even more of these elements entails the non-conscientiousness of an objection, I cannot think of an objection as conscientious when *all* three elements are absent in whatever form. Moreover, in my view, one cannot speak of conscience or conscientious objection where there is no ultimate concern.

### 13.3.1. The element of ultimate concern

We have seen in chapter 1 that the element of ultimate concern tends to appear in one of two guises: that of authority, or that of inspiration. The elements of authority and inspiration, then, represent two sides of the same coin. We have also seen that one way to describe the changes the symbolization of conscience underwent through time is in terms of a process of immanentization, a transition from transcendence (in a narrow sense of the term, as relating to the ‘supernatural’) to immanence. This transition roughly coincided with a shift of dominance from the element of authority to the element of inspiration.<sup>34</sup> It must be kept in mind, however, that this did not entail a loss of transcendence in a broader sense of the term, the sense of relating to the ultimate or absolute.

We see the shift from authority to inspiration reflected in the practice of conscientious objection. Whereas pre-modern and early modern conscientious objections were typically phrased in the language of authority, modern (especially twentieth-century) conscientious objections typically employ the language of inspiration.

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elements of the symbol of conscience can be identified; the (opposite) ‘danger’ that non-conscientious objections are mistaken for conscientious ones can never be completely removed.

<sup>34</sup> I say roughly, because the element of authority *can* occur in immanentized form as well. The Voice of Conscience, for instance, can exemplify the element of authority whether it is perceived as God’s Voice or not. Also, though particularly suited to express the element of authority, it *can* express the element of inspiration as well. Historically, we see that the element of authority persists for quite some time when immanentization has taken place, the authority then being attached to Reason. Also, the element of inspiration is dominant in the English Puritan movement, as well as in Romanticism. Hence, it must not be seen as belonging exclusively to immanentized or secular thought. Finally, the elements of authority and inspiration must not be taken to be mutually exclusive; they can exist alongside each other. In many cases, however, one of them tends to dominate at the cost of the other; Socrates is a clear exception to this rule.

Now, without looking into the details of the experience underlying a particular objection, we may simply *note the presence* of the element of authority, as when Socrates explains that “a thing divine and superhuman happens to me (...); I have had it ever since childhood, a certain voice which happens, and every time it happens it always turns me away from whatever I am about to do, but never turns me towards anything.”<sup>35</sup> Similarly, Thomas More, refusing to consent to the divorce of king Henry VIII, and refusing to recognize Henry as head of the Church of England, appeals to his conscience as something that he must follow if he wishes to avoid displeasing God and damning his soul.<sup>36</sup> Quaker Richard Seller, press-ganged into the British Navy in 1665, refused to take up arms. When the captain asked him why, “I told him, *I was afraid to offend God, for my warfare was spiritual, therefore I durst not fight with carnal weapons.*”<sup>37</sup>

A secular (immanentized) phrasing of the element of authority might refer to a categorical imperative, as Dennis Waters, conscientious objector in World War II, does: “I don’t wish to be a martyr at all, one doesn’t like doing this sort of thing, but there are times when one has this categorical imperative, ‘No, I won’t do that.’”<sup>38</sup> This kind of expression, of not being able to do something, turns up regularly throughout history, with both religious and secular objectors.<sup>39</sup> Martin Luther is said to have spoken the words: “Here I stand, *I can do no other*, so help me God.” Thomas More wrote: “*I can no further go*, but put all in the hands of him, for fear of whose displeasure for the safeguard of my soul stirred by mine own conscience (...) I suffer and endure this trouble.”<sup>40</sup> He also explained: “I *cannot* in everything think the same way that some other men of more wisdom and deeper learning do; *nor can* find in mine heart otherwise to say than as mine own conscience giveth me.”<sup>41</sup> In 1703, Quaker John Smith, in a similar situation to Richard Seller (mentioned above), stated: “And as I came to be acquainted with the discipline of the cross, and the divine light shining in my heart, about the 22d. year of my age, I was called to bear my testimony against wars and fightings, as being contrary to the doctrine of Christ, and the nature of his kingdom, and *could not* join with those that were for bearing armes for the defence of the country, against the French and Indian enemy...”<sup>42</sup> In files of conscientious objectors from the Dutch Archives of the Ministry of

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<sup>35</sup> Plato (1997), 73.

<sup>36</sup> De Silva (ed.) (2000), 74 (for instance).

<sup>37</sup> *An Account of the Sufferings of Richard Seller, of Keinsey, a Fisherman*, Philadelphia, 1772, 4, in Brock (ed.) (1993), 7. Italics in original.

<sup>38</sup> Goodall (1997), 203.

<sup>39</sup> ‘Religious’ must here be taken with its common meaning, not in Tillich’s sense.

<sup>40</sup> De Silva (2000), 65.

<sup>41</sup> *Ibid.*, 55.

<sup>42</sup> John Smith, *A Narrative of Some Sufferings, for his Christian Peacable Testimony*, Benjamin & Jacob Johnson, Philadelphia, 1800, 5-6, in Brock (ed.) (1993), 33-34.

Defence, I found an abundance of phrases on the same line as the above, a few examples of which are: “I *cannot* hurt people”, “I *cannot* and will not kill or harm another person”, “If an action goes against my conscience, I *will not be able* to perform it”, “I *will never be able* to kill someone consciously, intentionally, by means of violence”, and “Finally, there is the aspect of *just not being able to*.”<sup>43</sup>

The element of inspiration, like that of authority, is a key element; at least one of them will always be present in expressions of conscience. We have already seen this for Socrates, who stated that “doing nothing unjust or impious, *that is* my whole concern”.<sup>44</sup> In Thomas More’s case, the element of authority predominates over the element of inspiration. Some of his expressions are probably best seen as expressions of ultimate concern *sec*, without categorizing them as expressing either the element of authority or that of inspiration. On the other hand, many of his letters certainly seem to be ‘inspired’, if reserved in style. That it is an *ultimate* concern that is at stake is evident throughout his letters. More repeatedly emphasizes that it is not a ‘mere scruple’, or simple obstinacy, (as some people suspect), that prevents him from signing the oath Henry wants him to sign.<sup>45</sup> That conscience is a matter of ultimate concern to More is further evidenced by two things: More’s avowal that to go against his conscience would be to jeopardize his soul, to risk eternal damnation, and secondly by More’s willingness to accept the consequences of his stand, even if this meant death. I will come back to the second point later, when I will discuss whether ‘willingness to accept the consequences’ can be seen as an identifying aspect of conscientious objection in its own right. “[U]nto the oath that there was offered me I could not swear it without the [jeoparding of my soul to perpetual damnation”, More states.<sup>46</sup> And also: “...I can no further go, but put all in the hands of him, for fear of whose displeasure for the safeguard of my soul stirred by mine own conscience (...) I suffer and endure this trouble.”<sup>47</sup> To More, as would have been clear to his contemporaries (for whom the same held true or, by the standards of their time, should have held true), his soul was the most important thing in the world, because the soul was virtually the only thing *in* this world that was not *of* this world.<sup>48</sup> With the aforementioned

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<sup>43</sup> ADD. For privacy reasons, I cannot give more precise references. The quoted statements are all from the 1990’s.

<sup>44</sup> See chapter 1.

<sup>45</sup> See for instance De Silva (2000), 59, 74. In the latter instance More is quoted by his daughter Margaret Roper in a letter to Alice Alington, daughter to More’s second wife.

<sup>46</sup> *Ibid.*, 58. ‘Jeopard’ was a Middle English verb.

<sup>47</sup> *Ibid.*, 65.

<sup>48</sup> See also De Silva (2000), 18-19. De Silva (22) also emphasizes: “When More wrote in these prison letters that he had ‘a respect to mine own soul,’ he was not exclusively considering the eternal destiny of what is called the human soul or spirit.



Quakers, as in More's case, the element of authority predominates. However, the fact that conscience was a matter of ultimate concern to them appears most clearly from their willingness to die for the truth of it. In their conduct, they are certainly inspired. Seller, hearing people 'speak several things against' him, wanting to answer for himself, is said to have had the following experience:

"[T]here came a motion within me, and bid me *Be still, Be still, Be still*, three times, which I obeyed, and was comforted; then I believed God would arise: and when they had done speaking, then God did arise, and I was filled with the power of God, and my spirit lifted up above all earthly things, and wonderful strength was given me to my limbs, and my heart full of the power and wisdom of God, and with glad tidings my mouth was opened to declare to the people the things that God had made manifest to me..."<sup>49</sup>

In more contemporary cases, the ultimate nature of the concern in question is expressed in many ways, one of which is the categorical 'cannot' discussed above. Ultimacy is more often expressed in terms of self: 'protecting one's sense of oneself' and equivalent expressions.<sup>50</sup> Sometimes the element of inspiration is clearly present. One of the Dutch conscientious objectors whose files I studied consistently expressed his conscience in terms of beliefs, striving, determination – his was an empowering conscience. Quite regularly, people seem to be in search of inspiration, expressing a sense of crisis. Horace Eaton, a conscientious objector in the Great War, remembers: "It was the greatest crisis in my life, and only those called upon to face a similar issue or problem can realize the terrible weight of responsibility one felt, and above all the anxiety to do that which was Right."<sup>51</sup> One conscientious objector to military conscription whose file I looked into stated that to go against his conscience would mean to 'deny his existence'. Naturally, there are differences between secular and religious expressions, in the traditional sense of these terms. But I would like to emphasize once again that the significance of these differences must not be overstated. In religiously (in a narrow sense of the word) grounded conscientious objections, the element of authority continues to predominate. Yet it must be seen as the other side of the element of inspiration, and both terms must be taken to express ultimate concern. Finally, there are clear examples of religiously inspired conscientious objection in which the element of inspiration predominates. In 1941 Robert Marshall Putt, for instance,

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(...) More knew that if he had taken the oath against his conscience, he would have become, in that very moment, a lost man."

<sup>49</sup> Brock (ed.) (1993), 16.

<sup>50</sup> See the phrases quoted by Childress (1979), 316-317.

<sup>51</sup> Goodall (1997), 15.

publicly proclaimed that he was a conscientious objector; he was inspired by the example of Jesus, as well as by the principles underlying the American Constitution.<sup>52</sup>



An example of the religious imagery of 'secular' conscientious objections<sup>53</sup>

### 13.3.2. Intermezzo: the certainty and uncertainty of conscience

At this point it is worthwhile to look into certain matters more deeply. I leave the track of identification for a moment to consider, first of all, the meaning of the 'cannot' uttered by so many conscientious objectors, and secondly, a deeper (i.e. less easily visible, but no more or less central) aspect of conscientious objection on the personal-experiential level.

<sup>52</sup> Putt (1941).

<sup>53</sup> Source: [http://www.ppu.org.uk/learn/infodocs/cos/st\\_cos3s1\\_pict.html](http://www.ppu.org.uk/learn/infodocs/cos/st_cos3s1_pict.html) (accessed 10-2006).

### 13.3.2.1. The ‘cannot’ of conscience as explanation or justification

With respect to the conscientious objector’s ‘cannot’ it is helpful to take a look at a distinction made by Gerald MacCallum, between conscience as an *explanation* of behaviour, and conscience as a *justification* of behaviour. MacCallum notes that

“[t]here has been a recurring tension in the history of conscience between a view of conscience as something of which one is a helpless, or largely helpless, victim, and a contrary view of conscience as a guide leading one in a direction in which it is often *very* difficult to go. The distance between these views of a person’s relation to his conscience is roughly indicated by the apparent gap between Luther’s ‘I can do no other!’ (...) and the modern idea that one ‘ought to try to live up to’ one’s conscience, however difficult this may be to do. (...) [T]here are traces of each view throughout virtually the entire history of the concept, though the first view seems somewhat more prominent in the theological stages and the second somewhat more prominent in the secularized stages.”<sup>54</sup>

It is immediately clear that, in one respect at least, MacCallum is wrong, for we have just seen that the ‘Lutheran’ phrase ‘I can do no other’ (or some equivalent of it) is still very much in vogue today. And yet, MacCallum draws attention to an interesting problem. When someone appeals to his or her conscience, is that to *explain* certain actions, or is it (also) to *justify* them? Does the so often expressed ‘cannot’ indicate a *physical* inability, or something else? Most authors on conscience would go for ‘something else’. For Niklas Luhmann, as we have seen, *the* question of conscience is: ‘Can I do this and still be me?’ A ‘cannot’ of the kind we are dealing with here, would then mean: ‘I cannot do this and still be me’ – which entails that ‘I cannot do this’ is a way of expressing that ‘doing this’ would disturb, even end, the continuous existence of the original ‘I’. Another way of looking at it, is to see it as a strong form of a ‘moral cannot’. We often say things like: ‘You can’t do that’, when we mean, not that the person we are addressing cannot *physically* do a certain thing, but that it would be immoral to do so. But the best way to see how we must interpret the above ‘cannots’, is probably to look at the (verbal) context in which they are uttered. The person I quoted above, who stated that he would not be able to perform any action that went against his conscience, stated this in the following context:

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<sup>54</sup> MacCallum (1993), 183-184. MacCallum’s distinction is somewhat analogous to my own distinction between the element of authority and that of inspiration, but, for reasons that will become clear in the course of this subsection, I believe that he misjudged where the difference lies between more traditional religious expressions of conscience and modern secular expressions.

“The justification of my action flows from the operation of my conscience. If an action goes against my conscience, I *will not be able* to perform it. This may involve emotional difficulties/objections [bezwaren], like the feeling of oppression that violence brings about in me, as well as rational objections, like [those against] the way the army thinks about the way to solve conflicts.”

This person explicitly refers to a *justification* of his action. Although the rest of the first sentence has a somewhat mechanical ring to it, the final sentence speaks of *objections*, not of physical inhibitions. This is the language of reason, not causation. Earlier in the same letter, however, the author comes up with a highly ambiguous paragraph:

“To me, conscience is the whole of norms and values that indicate what I think is right or wrong, and according to which I wish to live and act. This influences my actions, on the one hand consciously, on the other hand unconsciously. With many things, I no longer wonder why I do them. My actions know/follow some sort of automatism; of itself one does things that are in accordance with one’s conscience.”

And in the next paragraph, he states:

“I have become more critical and with that the conscience that accompanies my actions has become more conscious. I no longer let myself be guided unconsciously by Christian norms and values.”

How are we to reconcile, if at all possible, the ‘automatism’ with the critical attitude? It is easier than it seems. It is merely realistic to say that there are things one does automatically, without reflection. But this is *post*-reflective, not *pre*-reflective action. As the conscientious objector above says: ‘I *no longer* wonder...’, implying that he thought about this before and determined his position, after which certain courses of action were allowed to become habitualized. It is also realistic to say that there are unconscious influences on our actions. We can only try to make ourselves as much aware as possible of the factors determining our (re)actions. That one ‘of itself’ does things that are in accordance with one’s conscience, is also a way of expressing the link between conscience and identity. Both conscience and our actions flow from who we are; we do not constantly have to recall who we are; hence, we often act without further reflection on whether this is wrong or right. This does not makes us ‘powerless to resist the dictates of conscience’, or a ‘helpless victim’ of conscience.<sup>55</sup> It would be just as odd to say that, as it would be to

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<sup>55</sup> Ibid., 184, 183.

say that we are helpless victims of our interests, our convictions, or our reasoning.

It seems to me, then, that what this conscientious objector tries to convey by saying that he will not be able to act against his conscience, is something of the force of the moral imperative with which he sees himself faced, and of the degree to which such action would be in discord with who he is – which are not two entirely different things, as the reader will have gathered. From the files of other conscientious objectors that expressed themselves in the ‘cannot’ form or an equivalent of that, it is also clear that we are not dealing with a ‘natural’ ‘cannot’. No natural (physical) inhibitions prevent the objectors from doing what they say they cannot do. They are not explaining their behaviour by pointing out certain processes of causation; they are justifying themselves by recourse to reasons and values, and by pointing out the compelling nature of the imperatives these entail. It is a justification from *importance*: only something of great importance, so they feel, will suffice to justify their objection. We may recall Randolph Bourne, quoted by Michael Walzer: Bourne, Walzer says, “contemplates and then rejects the designation of himself as a ‘conscientious objector’. He doesn’t, indeed, want to fight, but it’s not the case that he ‘would be delighted to work up [his] blood lust for the business [of fighting], except that this unaccountable conscience, like a godly grandmother, absolutely forbids.’ What forbids his military service is ‘something that is woven into his whole modern philosophic feel for life.’ Bourne claims that his refusal is the act of a *person*, not of an ‘objective conscience’ suppressing the lower orders of the self.”<sup>56</sup> Bourne refuses the idea of a conscience forcing him to do something or even strongly influencing him. This refusal is related to his particular understanding of the term ‘conscience’. Though we need not (and I do not) share this understanding, it does in this case help point out an important fact: that the idea of conscience as a purely causal factor in a person’s behaviour unduly separates the conscience from the person. The fact that Bourne rejects a conscience understood in this way, makes him all the more eligible for conscientious objector status in my eyes.

A final question is whether the ‘cannot’ of pre-modern and early modern times was of a different nature; that is, whether this *did* serve as an explanation, rather than a justification. Thomas More speaks of his refusal to sign the oath, to which “the offering of the oath unto me of pure necessity constrained me”.<sup>57</sup> But there are more extreme examples. In his article “The World’s Worst Worm”, Jonathan Wright shows how people in the sixteenth century struggled to distinguish those suffering from ‘natural melancholy’ from those afflicted by conscience. The symptoms were often the same, and could last for years. Sixteen-year-old Thomas Fitzherbert, being present at a

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<sup>56</sup> Walzer (1994), 92-93. See 8.2.1.

<sup>57</sup> De Silva (2000), 59.

Protestant service, felt so bad about this, that he was “seized with so violent a horror that I could not possibly remain there; I therefore rushed out”.<sup>58</sup> Francis Wodehouse, a non-conformist, “recalled that he had ‘decided, just once, to rig my conscience, and throw my scruples to the wind’ by attending an Anglican service, but ‘[i]mmediately I entered the church ... my bowels began to torture me. A fire seemed to kindle in them, and in a few moments flared up. The torment was acute. The flame rose right into my chest and the region of my heart, so that I seemed to be steaming and boiling in some hellish furnace.’”<sup>59</sup> It was physically impossible for these people to remain where they were. Thomas’ ‘could not’ is of a physical nature. But does that mean that in these two cases conscience, bodily manifesting itself in the manner described, can serve only as an explanation of their behaviour? I believe not. To answer this question in the affirmative is to forget the *intentionality* of conscience. Their bodies do not simply behave the way they do for no reason; instead, they respond to the situation in a way fitting to the strong convictions these people have. They do not simply leave the church service because of their physical condition, but their physical condition corresponds to their conviction that they should not be there and their desire not to be there. It is not unlike the situation of someone running away from an aggressive dog (for instance). Today, post-Jamesian theorists of emotion dare to point out the intentionality of emotions. Someone who runs away from an aggressive dog is not scared because he is running away (or because of bodily processes in general), as William James would have maintained; he is running away because he is scared of the dog. In conclusion: it is nowhere justified to see conscience as nothing more than an explanation of behaviour. There is always a reference to beliefs, convictions, et cetera. This conclusion will not come as a surprise, I suppose; it is in line with what was said earlier about the element of authority. The ‘cannots’ discussed here express this element, and may do so in the language of transcendence (narrowly conceived) or immanence, in secular or religious phraseology.<sup>60</sup>

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<sup>58</sup> Henry Foley, *Records of the English Province of the Society of Jesus*, 7 vols., London, 1875-1883, vol. 2, 210, quoted in Wright (1999), 123.

<sup>59</sup> Wright (1999), 124; he quotes from Philip Caraman (ed.), *The Other Face: Catholic Life under Elizabeth I*, Longmans, London, 1960, 59-60.

<sup>60</sup> The distinction I make here between the two ‘cannots’ is supported by the distinction made by Peter Bieri between the ‘zwanghafte’ and the ‘erzwungene Wille’. The first eludes insight and consideration, but the second does not; the first is involuntary like a tic, while in the second case one is forced to adopt a will one would rather not have. The first case is a case of internal compulsion, where ‘I can do no other’ is literally true. The second is a case of external compulsion, where ‘I can do no other’ is an expression of freedom. One regrets that the world is the way it is, and that one has to choose what one chooses, but ‘one can do no other’, ‘one has no choice’, for the world sometimes forces one to choose between two evils.

### 13.3.2.2. *Certainty and doubt; risk and courage*

The ‘cannot’ of the conscientious objector sounds like an expression of extreme certainty. But how can (s)he be so sure? *Is* (s)he so sure? When we consider some similarities between the symbol of conscience and the symbol of God, we will see that conscientious objection unites within itself – but never without tension – elements of both certainty *and* uncertainty.

In *Dynamics of Faith*, Paul Tillich distinguishes between two elements in the notion of God: “the element of ultimacy, which is a matter of immediate experience and not symbolic in itself, and the element of concreteness, which is taken from our ordinary experience and symbolically applied to God.”<sup>61</sup> The first element, the ultimate concern, Tillich says, “is in itself certain. The symbolic expression of this element varies endlessly through the whole history of mankind.”<sup>62</sup> So the first element is characterized by certainty, whereas the variable second element, the symbol, is the opposite:

“God as the ultimate in man’s ultimate concern is more certain than any other certainty, even that of oneself. God as symbolized in a divine figure is a matter of daring faith, of courage and risk.”<sup>63</sup>

These two elements, of ultimacy and concreteness – or, in other words, of ultimate concern and the concrete shape this concern begets – can also be discerned in the symbol of conscience. More in line with Tillich’s phrasing would be to say: in the notion of conscience, of which the symbol is the concrete element. But this is immaterial. In (what I have called) the symbol of conscience, we find the element of ultimacy in what I have called the elements of authority and inspiration. In my chapter on the symbol of conscience, I was mainly concerned with the stable elements in the symbol of conscience. In the present context, the variable element is of equal importance. For besides an element of ultimacy, there is an element of concreteness in the symbol of conscience, which is the concrete symbolic expression that is the vehicle for the element of ultimacy.<sup>64</sup> In other words: it is the concrete contents of conscience; the truth someone commits himself

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This means that the exercise of one’s freedom can be extremely hard, and occasionally requires great courage. See Bieri (2006), 110-122.

<sup>61</sup> Tillich (1957), 46.

<sup>62</sup> *Ibid.*, 46-47.

<sup>63</sup> *Ibid.*, 47.

<sup>64</sup> Cf. Madinier (1954), 6-7, where he speaks of conscience as “à la foi absolue et contingente (...) singulière et universelle, temporelle et éternelle” [“at the same time absolute and contingent (...) singular and universal, temporal and eternal”]; that conscience has this dual character is an “antinomie que toute théorie de la conscience morale doit résoudre” [“antinomy that every theory of conscience should resolve”].

to. This is a matter of risk, of courage – a true *auto-da-fé*, one might say. The usual meaning of this term brings us close to our subject of conscientious objection, a common association of which is that of martyrdom. The fact that conscientious objection entails an act of faith in the above sense contains an easily forgotten reason for the admiration we tend to feel for martyrs, for ‘heroes of conscience’, people like Thomas More. Their stand requires courage in more ways than one: it takes courage to resist other people and to persist in the face of torture and death; but the first act of faith, to commit oneself to a particular truth, involves risk and hence requires courage as well.<sup>65</sup>

Tillich notes that “it would be meaningless to ask whether one or another of the figures in which an ultimate concern is symbolized does ‘exist’. If ‘existence’ refers to something which can be found within the whole of reality, no divine being exists.”<sup>66</sup> For this reason, I have spoken of conscience as belonging to ‘insistent reality’. The term ‘conscience’ itself is the first concrete expression of that particular species of ultimate concern with which we are concerned in this book. To invoke conscience, then, even without adding ‘contents’, is already a matter of risk. Is it an adequate symbol for expressing ultimate concern in its aspect of the Good?<sup>67</sup> This depends for a large part on its power to point beyond itself, to the ultimate it is supposed to stand for. People may give themselves to symbols, or let themselves be carried away by symbols, that must be considered inadequate symbolizations of the ultimate. Now, in a certain sense, *any* symbolization is inadequate – a variable, historically contingent attempt to grasp what cannot ultimately be grasped. But some symbols must be considered inadequate in another sense, namely in their tendency to absolutize themselves, claiming intrinsic interest for themselves.<sup>68</sup> Or, alternatively, but with the same effect, it may be that the certainty of the element of ultimacy becomes attached to the concrete experiences that serve as subsidiaries in the symbolic relation. Here, the contents of conscience come into view; that is, the translation of this kind of ultimate concern into concrete formulations of moral principles and norms – a translation that can be more, but also less fortunate.

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<sup>65</sup> Carl Cohen (1968), 271, acknowledges that conscientious objection requires courage, but recognizes only the social, not the religious courage.

<sup>66</sup> *Idem.*

<sup>67</sup> Tillich distinguishes between an ontological and a moral type of faith, in the latter of which the ‘holiness of what ought to be’ is central. (And within the moral type, he distinguishes between a juristic, a conventional and an ethical type.) I would be equally happy with a (very traditional) distinction of aspects (or, perhaps, types) of ultimate concern in terms of the Good, the True and the Beautiful.

<sup>68</sup> See Tillich (1957), 96-97 on the two criteria of the truth of faith, the first of which is the adequacy of its symbols in the sense of its effectiveness, its power to ‘carry you away’ (to use Polanyi’s phrase); the second of which is “that it expresses the ultimate which is really ultimate”.



Faith and uncertainty, doubt and courage are closely bound up with each other in Tillich's view: "Doubt is overcome not by repression but by courage. Courage does not deny that there is doubt, but it takes the doubt into itself as an expression of its own finitude and affirms the content of an ultimate concern. Courage does not need the safety of an unquestionable conviction. It includes the risk without which no creative life is possible."<sup>69</sup> In Thomas More's last letters, we encounter the tension between certainty and doubt in a very pronounced form:

"My Lord of Canterbury taking hold upon that that I said, that I condemned not the conscience of them that sware, said unto me that it appeared well that I did not take it for a very sure thing and a certain, that I might not lawfully swear it, but rather as a thing uncertain and doubtful. 'But then,' said my Lord, 'you know for a certainty and a thing without doubt, that you be bounden to obey your sovereign lord your King. And therefore are ye bounden to leave off the doubt of your unsure conscience in refusing the oath, and take the sure way in obeying of your prince, and swear it.' Now al[though] was it so that in mine own mind methought myself not concluded [not legally bound], yet this argument seemed me suddenly so subtle and namely [especially] with such authority coming out of so noble [notable] a prelate's mouth, that I could again answer nothing thereto but only that in my conscience this was one of the cases in which I was bounden that I should not obey my prince, sith that whatsoever other folk thought in the matter (whose conscience and learning I would not condemn nor take upon me to judge) yet in my conscience the truth seemed on the other side. Wherein I had not informed my conscience neither suddenly nor slightly, but by long leisure and diligent search for the matter."<sup>70</sup>

More does not reply by stating that, on the contrary, his conscience is very certain. Instead, he repeats that he feels he can do no other, and that he will not judge another's conscience. The Lord of Canterbury (Archbishop Thomas Cranmer) feels that there is an inconsistency in More's position: if he is unwilling to condemn those who did what More himself refuses to do, why would he condemn himself for doing the same? Or, the other way around: if he is so sure that he should not sign the oath, why does he not extend this judgement to others who did sign? It seems that he cannot be so sure after all. In fact, the Archbishop confuses the certainty of the element of ultimacy and the uncertainty of the element of concreteness. Had More condemned others, who did sign, he would not so much have been consistent, but rather self-righteous. More consistently refuses to pervert his stance into one of self-righteousness; he leaves others to their own conscience. In line with this position, he remains open to any argument that

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<sup>69</sup> Tillich (1957), 101.

<sup>70</sup> De Silva (2000), 59-60.

might convince him to act otherwise than he does, even if he does not consider this very likely: "...if I might find those causes [the reasons why More refuses to sign the oath] by any man in such wise answered, as I might think mine own conscience satisfied, I would after that with all mine heart swear the principal oath too."<sup>71</sup>

Open(ended)ness and doubt, then, do not weaken conscience or the case of a conscientious objector, but are an integral part of it, without which conscientiousness would turn into self-righteousness, and the possibility of self-criticism would be lost. This very openness is a factor that induces conscientious objectors to use the language of determination, phrasing their objections in terms of a 'cannot', a 'not being able to'. It is not that their minds are closed to other options, that they are unwilling to survey other options, to change their minds – but they are saying that, the case being as it is, or as it appears to them at that moment, they can see no way around their conscientiously reached conclusion, provisional though it may be. The situation as they perceive it, allows them no other option than to conscientiously object. Hence, they 'can do no other', even though they are willing to revise their position come good reasons for doing so.

### 13.3.3. The element of the witness

The second core element of the symbol of conscience, and hence the second indicator of the conscientiousness of an objection, is that of the witness. In Socrates' case, this element is only implicitly present, in the sense that his *daimonion* must be witness to Socrates' actions and thoughts, if he is to speak out against some of them. The same applies to Thomas More, who saw conscience as, among other things, (keeper of) a record of his deeds, in particular those that were wrong. A clear conscience is a witness that has nothing to tell; nothing, but a tale of peace of mind. More spoke quite frequently about the clearness of his conscience, for instance when he says that "the clearness of my conscience hath made my heart hop for joy".<sup>72</sup> In an explanatory note, De Silva connects this phrase with a paragraph from Walter Hilton's *The Scale of Perfection*, part of which reads: "[A]s the Apostle says: *Gloria mea est testimonium conscientiae meae*. That is, My joy is the testimony of my conscience, and that is when it bears witness to peace and accord, true love and friendship between Jesus and a soul, and when it is in this peace it is in highness of thought."<sup>73</sup> Quaker John Smith, too, speaks of "the sweet

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<sup>71</sup> Ibid., 59.

<sup>72</sup> De Silva (2000), 100.

<sup>73</sup> Walter Hilton, *The Scale of Perfection*, John P. Clark and Rosemary Dorward (eds.), Paulist Press, New York, 1991, 282, quoted in De Silva (2000), 182. With respect to other matters than that for which he is held prisoner, More says: "in mine own conscience (...) I find of mine own life, matters enough to think on". (De Silva [2000], 95.)

peace and satisfaction of mind, that I enjoyed in this time of my suffering”.<sup>74</sup> This is all not very surprising, when we look at conscientious objectors that stand their ground. More explicit references to conscience as a witness are found when it is a bad conscience that is discussed, when people are warned not to stray from the right path, et cetera. Another thing to keep in mind is that with the gradual immanentization of conscience, the element of the witness also came to receive a different expression. From an external witness, conscience comes to be experienced as an internal witness. First as the impartial spectator, the man within; in more contemporary expressions of conscience, this internalized externalist language is also dropped. We find the element of the witness in expressions like “I could not live with myself” and “a man has to answer to himself first”, both adduced by James Childress, who has his own phrasing of the element of the witness: “[I]he appellat to conscience claims that he will not be able to forget the act in question if he performs it.” He also speaks of an ‘inner witness’.<sup>75</sup>

#### **13.3.4. The element of intimacy**

Then, finally, there is the element of intimacy. As explained in chapter 1, this comes in two guises: that of secrecy and that of privacy. The latter, often entailing the experience of conscience as being of a very personal, often emotional nature, is more regularly and more clearly present in modern symbolizations and other expressions of conscience than in pre-modern ones. It would be a mistake to read in ancient uses of the term ‘heart’ simply the same connotations of intimacy we now attach to the word – these were present, but certainly did not exhaust the meaning of the word. In ancient Egypt, the word had both cognitive and noncognitive connotations. In the Old Testament, the word often expressed a more emotional aspect of conscience.

In pre-modern times, the element of intimacy turns up quite regularly in the form of secrecy. You may recall C.S. Lewis’ remark that ‘consciring’ was often close to ‘conspiring’. We have also seen (in chapter 1) that Hobbes notes a metaphoric use of the term ‘conscience’ “for the knowledge of [one’s] own secret facts, and secret thoughts”. Thomas More articulates the element of intimacy in this form when he states: “Finally as touching the oath, the causes for which I refused it, no man wotteth [knows] what they be for they be secret in mine own conscience...”<sup>76</sup> The element of intimacy also turns up in More’s letters in the form of privacy – which shows that the easily made association of this type with modernity is not exclusive. Time and again, More emphasizes that he only asks that others don’t meddle with his conscience, like he has never meddled with the conscience of

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<sup>74</sup> Smith, 14 in Brock (ed.) (1993), 42.

<sup>75</sup> Childress (1979), 317, 324.

<sup>76</sup> De Silva (2000), 94.

another, and will never do so.<sup>77</sup> The emphasis here is not on the uniquely personal nature of conscience, but on its being ‘nobody’s business’ except one’s own.

In chapter 12, we saw that Heinrich Scholler reduces freedom of conscience to the aspect of intimacy in the form of secrecy, stating that the principle of freedom of conscience serves to protect a ‘Geheimsphäre’, a secret sphere that is a part of the private sphere that is not accessible to others off-hand. According to Scholler, conscientious action (hence also conscientious objection) is allowed *inside* this sphere alone.

Randolph Bourne provides an excellent modern example of the element of intimacy. His conscience is not ‘like a godly grandmother’ that forbids him to fulfil his military service, but rather ‘something that is woven into his whole modern philosophic feel for life’ – something for which Bourne, as we have seen, does not want to use the term ‘conscience’, exactly because he feels that this suggests an external authority, in other words: because in his view of conscience the element of intimacy that is such a strong element of his experience is lacking.

#### 13.4. IDENTIFIERS OF CONSCIENTIOUS OBJECTION, ON THE PUBLIC LEVEL

It is worth noting that of the core elements of the symbol of conscience, when they function as indicators of the conscientiousness of an objection, those are of primary importance, that are of a more public nature. Even though they must all be located on the personal-experiential level, some core elements will more often present themselves publicly. The strongly related elements of authority and inspiration are of this kind. These are the elements that primarily occasion someone to make a stand – which is by definition a public event.

There are, however, a number of identifying aspects of conscientious objection that are of a primarily (if not exclusively) public nature; aspects that are to be located, not on the personal-experiential, but on the public level. When I say that there *are* these aspects, I should immediately qualify this statement by saying that this is *arguably* so. It is even less clear here than in the previous paragraph that the absence of any or even all of these aspects (with the exception of the first) would necessarily vitiate any claim that some objection should be classified as a conscientious objection.

##### 13.4.1. The relational nature of conscientious objection

This first aspect draws attention to the relational nature of conscientious objection; to the fact that it is always an objection *to* something (a practice, the performance of an action), and, moreover, an objection to *another*

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<sup>77</sup> See for instance De Silva (2000), 58, 60, 61, 90, 94.

(*authoritative*) party's demand.<sup>78</sup> The latter is of most interest in the present context. There is always another party involved. Socrates conscientiously refuses to perform an action demanded of him by the polis. Thomas More conscientiously objects to the signing of a declaration that king Henry VIII wants him to sign. The aforementioned Quakers conscientiously refuse to take up arms when the Navy demands that they do. In these cases, the conscientious objector always faces (representatives of) the government. This need not be the case, however. A doctor who conscientiously refuses to apply a certain treatment does so in face of the hospital management's demand – and only indirectly in face of a demand made by other parties (society, the government). If we cannot recognize this first aspect, the relationality of conscientious objection, we cannot speak of conscientious objection. But the relationality usually involves a third party as well: an audience in the (symbolic) presence of which the conscientious objector makes and/or justifies his or her objection. The distinction between the demanding party and the audience is not always clear. Committees set up to evaluate conscientious objections to military service indirectly represent both the government and society, and such a committee is often the only concrete audience a conscientious objector faces.<sup>79</sup>

The element of ultimate concern is most basic on the personal-experiential level; in another way, the relationality of conscientious objections is most basic on the public level. Ultimate concern defines the experience; without the relationality of conscientious objections there would be no public level. The relation between the two is not tautological, however. The 'demanding' party may remain vague, the demand implicit, and the objection private. Here, however, we are concerned with the political-juridical phenomenon of conscientious objection. With this phenomenon, the combination of ultimate concern and the relational nature of conscientious objections generates a number of other aspects that allow us to recognize cases of conscientious objection. These will be discussed below.

#### **13.4.2. Public reasoning**

A second identifying aspect on the public level is the aspect of justification, in the sense of presenting public reasons for one's stance. I have touched on this aspect before, in my treatment of MacCallum's distinction between conscience as explanation and as justification of behaviour. The point here is

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<sup>78</sup> You will recall that our focus was on conscientious objection as a political-juridical phenomenon. Hence the aspect of the demand. With the personal kind of conscientious objection (as in the case of vegetarianism), it is not at all clear that this second relational aspect is present, though the first, of course, is.

<sup>79</sup> In the Netherlands, the committee (instated by the government) that evaluated conscientious objections to military service *advised* the Minister of Defence; it did not decide for the government. In practice, its advice was seldom ignored.

that someone who, for example, conscientiously objects to military service, will in most countries not simply receive the status of conscientious objector, if he does not produce reasons for his position; in other words: if he does not come up with a reasonable story, that other people can understand (to a certain extent), even if it does not convince them. Many problems come together here; that of the ‘reasonableness’ of conscience itself, for instance, and the problem of (public policy towards) a truly conscientious objection that the public does not understand. I cannot look into these problems extensively here. Though I firmly disagree with Cohen when he states that “the legal provision [for conscientious objection to military service] should be devised to determine who is a genuinely *conscientious* objector, that is, who honestly and deeply believes (*whatever his grounds for that belief*) that it would be morally wrongful for him to participate in war”, because I *do* think that the grounds for belief matter; and although my views differ also from Childress’ views in that he treats the matter of justification too much from the subjective point of view, the public aspect of which is no more than a motive statement, I will have to save these problems for a later time.<sup>80</sup> What I wish to emphasize here is that we expect a conscientious objector to explain publicly (primarily to the demanding party and indirectly to a wider audience, to society), to the best of his abilities, *why* (s)he objects to whatever is demanded of him or her. It is not enough to say that one is a conscientious objector; one has to ‘demonstrate’ the conscientiousness of one’s objection. In doing so, one will have made a start in adducing reasons for one’s position. When someone conscientiously objects to military service, he will be expected to explain why he objects to military service, and to do so in terms that are understandable to others.<sup>81</sup>

In relation to this I can say something, though not much at this point, about the ‘reasonableness’ of conscience. Some people may think that conscience and reason are mutually exclusive, so that appealing to conscience is by definition something wholly different from giving reasons. Even worse, some people think that conscience is not a matter of *thinking* at all, but simply of feeling and intuition (both seen as completely different from thought). Looking at our historical examples of conscientious objection, however, we see that Socrates’ conscience was not opposed to thinking, reason and reason-giving at all. When he stated that “doing nothing unjust or impious” was his whole concern, he gave a reason for his refusal to bring in Leon the Salaminian to be killed, namely that he thought this order was unjust. Thomas More stated that “for the instruction of my conscience in the matter, I have not slightly looked, but by many years studied and

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<sup>80</sup> Cohen (1968), 275 (the second italics are mine); Childress (1979), 325-329.

<sup>81</sup> Some of the problems that occur when ‘intelligibility’ becomes problematic will be treated in the following chapter, where the case of conscientious objection to marrying gay couples is treated.

advisedly considered”, and also that “I had not informed my conscience neither suddenly nor slightly”.<sup>82</sup> That this was not merely something he himself did, but something everyone ought to do, More expressed as follows: “[A]ny man (...) is bounden if he see peril to examine his conscience surely by learning and by good counsel and be sure that his conscience be such as it may stand with his salvation, or else reform it.” And yet More is repeatedly accused of obstinacy and of unwillingness to provide reasons for his position. This seems to fit in with Bernard Gert’s remark that “in the situations where you did not want a person to follow his own conscience, you would probably not call him ‘authentic’ if he did, but rather something like ‘stubborn’.”<sup>83</sup> It is not true that More never gave any reasons supporting his position. He explained his position, in very careful wording, in his letter to Thomas Cromwell of the fifth of March 1534.<sup>84</sup> What *is* true, is that More refused to point out particular parts of the oath the King wanted him to take, that offended his conscience:

“[T]hey somewhat laid unto me for obstinacy, that where as before, sith I refused to swear, I would not declare any special part of that oath that grudged my conscience, and open the cause wherefore.”

But More had his reasons for this refusal:

“[T]hereunto I had said to them that I feared lest the King’s Highness would as they said take displeasure enough toward me for the only refusal of the oath [i.e. for the refusal of the oath alone]. And that if I should open and disclose the causes why, I should therewith but further exasperate his Highness, which I would in nowise do, but rather would I abide all the danger and harm that might come toward me, than give his Highness any occasion of further displeasure, than the offering of the oath unto me of pure necessity constrained me.”

More then offered to put his reasons in writing, if they (the King’s Commissioners, by whom he was questioned) could guarantee that this would not put him in danger of any of the King’s statutes. They could not guarantee this. More’s willingness to accompany these written reasons (or ‘causes’, as he called them) by an oath that “if I might find those causes by any man in such wise answered, as I might think mine own conscience satisfied, I would after that with all mine heart swear the principal oath too”

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<sup>82</sup> De Silva (2000), 72, 60.

<sup>83</sup> Gert (1988), xviii.

<sup>84</sup> De Silva (2000), 48-56.

thereby became irrelevant. More then thought, as he wrote to Margaret Roper:

“[L]o, (...) if I may not declare the causes without peril, then to leave them undeclared is no obstinacy.”<sup>85</sup>

This is highly important: the demand that the conscientious objector give (public) reasons for his stance is qualified by considerations of the objector’s safety.<sup>86</sup> The objector does not need to take a greater risk than necessary. More explains this in a later letter to Margaret Roper:

“It was also said unto me that if I had as lief [if I would as willingly] be out of the world as in it, as I had there said [in a previous questioning by the King’s Commissioners], why did I not speak even out plain against the statute. It appeared well I was not content to die though I said so. Whereto I answered as the truth is, that I have not been a man of such holy living as I might be bold to offer myself to death, lest God for my presumption might suffer me to fall, and therefore I put not myself forward but draw back. Howbeit if God draw me to it himself, then trust I in his great mercy, that he shall not fail to give me grace and strength.”<sup>87</sup>

I think More is quite reasonable in this respect. In fact, this goes for the publicity of conscientious objection in general: publicity can hardly be demanded in a ‘conscientious-objection-unfriendly’ context; a state that does not tolerate opposition to its demands, conscientious or not, and kills or severely punishes those who resist the state on grounds of conscience, cannot expect conscientious objectors to declare themselves publicly. It is a testimony to their courage that many men and women in history have nevertheless done exactly that: declare their conscientious objection in face of a power that did not recognize conscientious objection as something to respect. In a ‘conscientious-objection-friendly’ context, the kind of context in which we usually speak of conscientious objection, (the opposite kind of context more readily inviting rebellion rather than conscientious objection), the demand of public justification can be deemed legitimate.<sup>88</sup> Hence, conscientious objection tends to have this aspect, that it entails a justification in terms of reasons that others can understand (to a certain extent at least) –

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<sup>85</sup> *Ibid.*, 59.

<sup>86</sup> Socrates also adapts his behaviour to the circumstances with a view to his own safety: “Do you think, then, that I would have survived for so many years if I had been in public life, and, acting in a manner worthy of a good man, had come to the aid of the just and (as one thought) had placed the highest value on that?” (Plato [1997], 75).

<sup>87</sup> De Silva (2000), 121.

<sup>88</sup> Note that a ‘conscientious-objection-friendly’ context does not imply a weaker state, but in a sense a stronger and more self-confident one. See 13.3.2.2.



which implies that the conscientious position is well-considered, and carefully thought-through.<sup>89</sup> For H.J. McCloskey, the latter criterion provides a crucial reason for attaching great significance to conscientious objections: “Where not merely personal convenience but one’s *carefully thought out*, sincerely held moral beliefs dictate disobedience, a new factor enters, such that disobedience is not only morally permissible but in a sense basic to morality, morally necessary.”<sup>90</sup>

People are not equally capable of articulating their motives and reasons.<sup>91</sup> Hence, the aspect of justification or public reasoning cannot be turned into a demand for systematic ethical argumentation.<sup>92</sup> All that can be said to be part of the practice of conscientious objection is a sincere attempt to render one’s position intelligible to others. I will return to this subject in 13.4.4.

### 13.4.3. Acceptance of the consequences

The end of the previous paragraph brings us to a third identifying aspect of conscientious objection on the public level: that of acceptance of the consequences.<sup>93</sup> I noted just now that the demand of publicity of a conscientious objection (whether related to reason-giving or conceived more generally) is qualified by the consequences such publicity may have for the objector. This means that we cannot expect conscientious objectors in any context to publicly declare themselves, demanding for themselves the status of conscientious objector. In some contexts, such a status is simply not available, and the objector will receive a penalty instead. In Western-European countries (among others), where a right to conscientious objection is recognized, a stronger case can be made for the demand that conscientious

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<sup>89</sup> Bernard Gert even includes this aspect in his definition of conscience. For him, “to go against one’s conscience” is to “act contrary to what one would publicly advocate”.

<sup>90</sup> McCloskey (1980), 542. My italics.

<sup>91</sup> This problem is poignantly expressed by a conscientious objector quoted in Goodall (1997), 102: “[H]ow can you prove you’ve got a conscience? You can’t put into words – anybody who’s good with words can put on an act, might get absolute exemption, but this is not the point, those people there are trying to get at your conscience but how can they, how can you explain this conscience.”

<sup>92</sup> Vermeulen (1989), 215. Vermeulen overstates the emotionality and inarticulability of conscience a bit, to my taste, but draws the right conclusion: only evident thoughtlessness should lead to rejection of an appeal to conscience.

<sup>93</sup> Cf. Dahlke (1945), 22: “In the history of Christianity pacifism (...) expresses a type of social action which Max Weber has called *wertrational*, i.e., an adherence to a value for its own sake without consideration or calculation of the consequences. (...) For purposes of analysis the conscientious objector may be regarded as one whose behavior is set on a *wertrational* basis.” My interpretation of what the typical conscientious objector does is a bit weaker: that (s)he accepts the consequences does not mean that (s)he did not *consider* them.

objectors accept the consequences of their stand. Would a Dutch young man twenty years ago have tried to avoid military conscription by hiding from the government, even if he did so for reasons of conscience, we could not have identified it as an example of conscientious objection. Conscientious objection is not the same as dodging the state on grounds of conscience.

Throughout history, conscientious objectors have stood their ground even in outspokenly ‘conscientious-objection-unfriendly’ contexts. Socrates is an example (though he was on trial for other things besides his conscientious refusal to bring Leon in); Thomas More is another clear example. The aforementioned Quakers are good illustrations of this fact, too. In their case, however, their action provokes a change of attitude towards them in the people around them. Richard Seller had been sentenced to death, but was reprieved by the Commander. Several men on board the vessel spoke on his behalf, one of them stating: “[H]e [Seller] hath already declared, that if we take his life away, there shall a judgment appear upon some on board within eight and forty hours, and to me it hath appeared...”<sup>94</sup> Seller was also fortunate that his judge was a Catholic, which predisposed the Commander in his favour: “I say, said the Commander, he is more a *Christian* than thyself.”<sup>95</sup> Seller then turned out to be a lucky charm for the ship and its crew: “Being thus preserved alive, he was made instrumental to the saving of the ship, and the lives of many therein: and by the exercise of an undaunted *Christian* courage and constancy, triumphed over the malice of his adversaries, who, conscience of his innocence, at length became his friends and favourers.”<sup>96</sup> This all served to testify to the truth of Seller’s belief, of course. Smith’s story lacks the miraculousness of Seller’s account, but he was released as well. There are many ‘in-between’ cases. Given the treatment (some) conscientious objectors to the Vietnam War received in the United States, must we label that context ‘conscientious-objection-unfriendly’? Conscientious objection was a recognized phenomenon; there were regulations and procedures. And yet, nearly 600,000 men illegally evaded the draft. Between 30,000 and 50,000 sought refuge in Canada.<sup>97</sup> This was not without reason. For example:

“If the CO applications were denied, individuals were classified I-A and subject to being drafted. Those who were ordered for induction were required to report to a military induction center for a physical examination. Those who passed were instructed to take one step forward to signify their acceptance of induction. Anyone who failed to do so was informed of the consequences and the procedure was repeated. Inductees who refused a second time to step forward were subject to prosecution. Conviction for a

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<sup>94</sup> Brock (ed.) (1993), 18.

<sup>95</sup> *Ibid.*, 20.

<sup>96</sup> *Ibid.*, 29. ‘Conscience’ is here used in its meaning of ‘conscious’.

<sup>97</sup> Tollefson (1993), 6.

draft law violation meant imprisonment for up to five years and a fine of up to \$10,000.<sup>98</sup>

Punishment, then, could be quite severe, making it quite understandable that many fled to Canada or went in hiding. Were such people conscientious objectors or not? Though I believe the term ‘conscientious objection’ does evoke associations of martyrdom in many of us, I do not believe that martyrdom is a necessary prerequisite for entitlement to the title ‘conscientious objector’. The answer depends on more practical considerations. We tend to speak of conscientious objectors only in the context of a *practice* of conscientious objection. I have made a distinction between conscientious objection as a private phenomenon and conscientious objection as a political-judicial phenomenon. The term itself, however, derives from the political-judicial discourse. Focusing on the political-judicial phenomenon of conscientious objection, it makes most sense to limit the use of the terms ‘conscientious objection’ and ‘conscientious objector’ to situations in which the relational aspect discussed above is present; that is, to situations where an actual confrontation between some power or authoritative party and an objector occurs – a confrontation of which acceptance of the consequences by the objector is simply a corollary. Such confrontations occur most regularly in ‘conscientious-objection-friendly’ contexts; indeed, the term did not exist before the phenomenon became more or less institutionalized. Though people like Socrates and More can legitimately be called conscientious objectors – the relational aspect is certainly there, as well as the conscientiousness – this is a broad use of the term. We must recognize this in order to avoid anachronism; we must beware not to smuggle into the past associations belonging to the common modern phenomenon and institutionalized practice of conscientious objection.<sup>99</sup> People who were conscientious objectors in the *private* sense, but did not make a public stand (but instead chose to run away, for example), were not necessarily cowards; many of them will have had a sensible concern for their own well-being. The only reason why I wouldn’t call them conscientious objectors without qualification is the one I gave above: that the term usually refers to the political-judicial phenomenon of conscientious objection, and that this has a relational aspect that is (partially) lacking in the private form of conscientious objection. To withhold from such people the label ‘conscientious objector’, then, does not imply any judgement with respect to their courage or lack of it. Naturally, a grey area remains. What about those Americans who fled to Canada *after* their application for CO status was turned down, though their objections were genuinely

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<sup>98</sup> *Ibid.*, 8.

<sup>99</sup> Why conscientious objection became a relatively common practice is a question that will be discussed later in this chapter.

conscientious? They *did* confront the government, but they did *not* accept the consequences – but, on the other hand, these consequences were not those of being a conscientious objector, but those of being *denied* the status of conscientious objector. I cannot dissolve grey into either black or white, and I do not think I need to. In case of doubt, it is just a matter of stating as clearly as possible *in what sense* one thinks the person under discussion is a conscientious objector. At any rate, in ‘conscientious-objection-friendly’ contexts, it seems reasonable to ask that conscientious objectors at least accept the consequences of being granted the legal status of conscientious objector.

How do conscientious objectors express and demonstrate their ‘acceptance of the consequences’? Well, we have seen some examples already. Socrates stated and showed that death ‘concerned him not at all’. Thomas More stated that “I would for the enduring of the uttermost do any such thing as I should in mine own conscience”.<sup>100</sup> In one of his last letters to his daughter Margaret, More wrote:

“That that shall follow lieth in the hand of God, whom I beseech to put in the King’s Grace’s mind that thing that may be to his high pleasure, and in mine, to mind only the weal of my soul, with little regard of my body.”<sup>101</sup>

As a final consequence of the stance he took, he was beheaded on Tuesday, the 6th of July 1535. Both Richard Seller and John Smith suffered severe physical (and mental) abuse, but underwent this with resignation. Richard Seller told the ship’s commander, the judge, and the assembled commanders of the other ships of the convoy:

“I do not value what you can do to this body, for I am at peace with God and all men, and you my adversaries; for if I might have an hundred and thirty years longer, I can never die in a better condition...”<sup>102</sup>

Dutch conscientious objectors to compulsory military service either accepted alternative service, or, if they were ‘totaalweigeraars’ (Dutch for ‘absolutist objectors’), refusing alternative service as well, went to prison for their beliefs. In one report of an interview with a conscientious objector, the chairman of the aforementioned advisory committee noted that the objector’s conscience “forbids his serving in the military, whatever the consequences of such a refusal may be”.<sup>103</sup>

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<sup>100</sup> De Silva (2000), 106.

<sup>101</sup> *Ibid.*, 115.

<sup>102</sup> Brock (ed.) (1993), 16.

<sup>103</sup> ADD. The interview was held in 1991.

#### 13.4.4. Consistency

Related to the aspect of acceptance of the consequences, to conclude, is the aspect of consistency. Most authors on conscientious objection emphasize this aspect, though the link with ‘acceptance of the consequences’ is often disregarded. In Niklas Luhmann’s view, the consistency that others demand from the individual is crucial for the development of the individual’s conscience. The function of conscience is to guard its owner’s integrity, in the sense that it prevents its owner from doing something that is (gravely) inconsistent with who that person is and wants to be. To recall: according to Luhmann, *the* question of conscience is: ‘Can I do this and still be me?’. What we expect from a conscientious objector is not just consistency in his or her expressions, and in the explanation of his or her position, but also (and maybe even more importantly) consistency in *behaviour*. Luhmann (like some other authors) suggests a test of integrity, in which *the* criterion is consistency with the objector’s biography.<sup>104</sup> An appeal for the status of conscientious objector, made on pacifist grounds by a new conscript who had been repeatedly convicted for violent assault, the last case having occurred very recently, has about the same chance of success a wart-hog wearing heavy make-up would have of winning a beauty contest. Cain observes this in United States practice: “[A]nyone working in a defense plant has a poor claim on I-O status.”<sup>105</sup> The principle underlying this practice makes sense; it becomes worrying when, as Cain reports, this principle is extended “to a busboy working in a military airport cafeteria”, as occurred in the case of *Robertson v. US*, in 1953.<sup>106</sup>

Such an example shows that the problem of (in)consistency cannot be reduced to that of (in)authenticity or (in)sincerity. The latter problem is much more often explicitly discussed than the problem of (in)consistency *without* insincerity. Cain speaks of “the perennial problem of deciding the quality of an applicant’s sincerity”.<sup>107</sup> That the objector will have to be sincere, that his or her objection needs to be authentic, is self-evident. But this is not a new, added criterion. It is simply part of the demand that the objection be conscientious – which means that when Cohen speaks of the ‘genuineness of the conscientious motivation’, he is guilty of using a pleonasm.<sup>108</sup> Hence, we can focus our attention on the more interesting problem of (seeming) inconsistency without insincerity.

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<sup>104</sup> See also Childress (1979), 334-335.

<sup>105</sup> Cain (1970), 303. ‘I-O status’ meaning: “assignment to civilian work ‘contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate.’” (299) See also Tollefson (1993), 8.

<sup>106</sup> Cain (1970), 303 (footnote 66).

<sup>107</sup> *Ibid.*, 303.

<sup>108</sup> Cohen (1968), 274.

People are often inconsistent, both in speech and in behaviour, as well as in the relation between both. When someone seems to be inconsistent, because from a third-person perspective he says one thing and does another, or when someone acts in ways that seem inconsistent to an outsider, such a person's integrity might be doubted – especially if the inconsistency attaches to behaviour of more than trivial significance. Bert Musschenga attends to this problem, emphasizing that the conclusion that someone lacks integrity should not be drawn too readily. It is quite often possible that someone can produce a plausible story that explains the supposed inconsistency in a satisfactory way.<sup>109</sup> But apart from seeming inconsistency that may dissolve in light of a person's narrative explanation, there is also *real* inconsistency; that is, inconsistency that resists such dissolution. To be inconsistent in this way, to be truly inconsistent, is not exceptional. Adherence to a plurality of values, inarticulacy of one's 'moral framework', limitations of certain capacities (as shown in forgetfulness, for instance), and many other factors contribute to our regular inconsistencies. How harsh should such inconsistencies be judged?<sup>110</sup> Should we demand that the conscientious objector be totally consistent, the equivalent of Hare's archangel in the field of consistency? That would be to ask more of them than one could ask of any man. More importantly (for practical purposes at least): it would enhance the chances of success in the case of some applicants for conscientious objector status, while the chances of others would decrease. Too rigid an emphasis on the criterion of consistency would favour the more intellectually gifted, and especially the more articulate among them. A skilled word-juggler will be able to keep a large number of balls in the air at the same time, whereas the amateur attempts to juggle with two and drops them both. It is clear from several of the files of conscientious objectors (or applicants for that status) I studied that many applicants experienced problems in articulating what they meant. They were regularly confronted with questions that forced them to consider an aspect they had not previously thought about. Though it is certainly reasonable to ask that conscientious objections carefully consider their position – I take this as part of the meaning of 'conscientious objection' – it is plausible that some genuine conscientious objectors saw their applications turned down due to

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<sup>109</sup> Musschenga (2004). On integrity, see also Musschenga (2001) and (2002).

<sup>110</sup> Naturally, I am speaking of *relevant* inconsistencies. In the case of military service, a relevant inconsistency might be that someone is a fervent hunter and member of a shooting club, while at the same time he states that he cannot pick up a gun as a soldier (and this seeming inconsistency might still be dissolved through a plausible narrative); an irrelevant inconsistency would exist, for instance, between someone's expressed dislike of the colour of military uniforms and the abundant presence of clothes of that colour in this person's wardrobe. Though this inconsistency is indeed irrelevant in itself, it might raise some doubts concerning the individual's sincerity, or else with respect to his mental capacities.

their lack of articulacy, or inconsistencies in their expressions that arose during interviews with the advisory committee. For this reason, I would say that the evaluation of both the aspect of consistency and that of ‘public reasoning’ ought to be appropriate to the capacities of the objector in question. The emphasis should lie on discovering the objector’s motivating experience, either in the form of an inspiration or an experienced authority, *not* on discovering (let alone provoking) verbal inconsistencies. The case of inconsistencies in a person’s biography is more difficult, but there, too, discovery of such inconsistencies should not of necessity lead to the conclusion that it is not a case of conscientious objection. People often do not relate their behaviour in one field of life to their behaviour in another field, or to the whole of their convictions. This is not necessarily a lack of conscientiousness; it might betray a ‘lack’ of reflection that is common to all of us. One could say that this person’s conscience was not completely comprehensive, but that does not mean that the mode of consciousness we call conscience was absent. So the issue comes to revolve around the degree of comprehensiveness of conscience we may require. Again, only general guidelines can be given – the rest depends on the *phronesis* of those who judge the case on the day. Gross inconsistencies are not compatible with a genuine conscientious objection; in a case like the busboy mentioned by Cain, I see no reason why he would disqualify for conscientious objector status. In between is, once again, a grey area. As in the case of verbal inconsistencies, where inconsistencies in a person’s biography are concerned the emphasis should lie on the individual’s experience of conscience, not on tracking down the inconsistencies in someone’s life.

A final problem with the criterion of consistency arises with the possibility of *conversion*. As Cain notes: “Boards take a dim view of ‘Damascus converts’.”<sup>111</sup> Self-acclaimed converts will often arouse the suspicion of insincerity, because their conversion ‘conveniently’ precludes the possibility of a Luhmannian test of integrity by the standard of their biography. And yet, real cases of radical conversion occur now and then. After everything (within reasonable limits) has been done to ascertain the conscientiousness of an objection, some dubious cases will still remain. The number of such cases will be greater, however, to the extent that conscientious objections are dealt with in a more formal and procedural manner.<sup>112</sup>

I started this section stating that the aspects of consistency and ‘acceptance of the consequences’ are related, and that this relation is often overlooked. The latter is true, because most authors focus on consistency in the *past*, reviewing, as it were, the evidence of a person’s (in)sincerity and (in)consistency. Luhmann’s test of integrity by the standard of biography is a

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<sup>111</sup> Cain (1970), 304.

<sup>112</sup> See my case study of conscientious objection to compulsory military service in the following chapter.

case in point.<sup>113</sup> From a Luhmannian perspective, what I have here called the aspect of consistency (as distinguished from acceptance of the consequences), will most readily spring to view. But when someone like Cohen argues that what ought to be determined is “whether the objector is truly conscientious”, and elucidates: “When a man does what he honestly and deeply believes he ought not to do, we think him unprincipled and a hypocrite. The conscientious objector (...) will not tolerate that hypocrisy in himself...”, it is equally conceivable to focus on consistency between the (past and) present and the *future*.<sup>114</sup> From such a perspective, the aspect of acceptance of the consequences will be primary. Most recent authors on conscience aim to discredit any test of the *contents* of conscience. What ought to be judged, they argue, is not whether someone is *right* in what he believes, but whether he really and deeply believes it. To ascertain whether someone really and deeply believes something, in Ryle’s words: whether someone has certain convictions ‘in an operative degree’, one can look both towards the past and towards the future. The latter would become operational through questions like: ‘Does this objector intend to stick to his position?’; ‘Is this (supposedly) conscientious objector willing to accept the consequences of his position?’; ‘If a supposedly conscientious objector says that he or she intends to stick by his or her conscience, no matter what the consequences will be, does his or her present attitude testify to the presence of such an intention?’ Socrates claimed: “[D]eath concerns me (...) not at all, whereas doing nothing unjust or impious, *that is* my whole concern.” Had Socrates not stood his ground when death turned out to be the consequence of his position, his behaviour would have been inconsistent both with earlier behaviour and with what he said. To be consistent, in his position, meant to accept the consequences.

Governments have made ample use of conscientious objectors’ consistency and willingness to accept the consequences of their position, using these traits as a criterion of conscientiousness and as a deterrent for fake conscientious objectors. With respect to military service, Mellors and McKean note: “It is usual for the term of alternative service to be longer than normal military service. Conscientious objectors must be seen to make equal sacrifices, despite their stand. Indeed some objectors have deliberately sought longer periods of service as a means of demonstrating the genuineness of their conscience. Additional periods of service in some countries may simply be a few months (...). In other countries, the period is considerably extended to act as a deterrent or punitive measure.”<sup>115</sup> Vermeulen states that “with the criterion of moral seriousness, manifesting

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<sup>113</sup> Mellors and McKean (1982), 231, note that “[d]ecisions tend to rely on previous lifestyle and evidence of associates and colleagues”.

<sup>114</sup> Cohen (1968), 270-271.

<sup>115</sup> Mellors and McKean (1982), 234.



itself in willingness to make a sacrifice, *the* constant in the concept of conscience is indeed found".<sup>116</sup> I would say that *a* constant is found, not of the concept of conscience, but of conscientious objection. (An experience of conscience does not necessarily result in willingness to make a sacrifice.) Luhmann's concept of conscience is devised with the practice of conscientious objection in mind, which is why he, too, connects conscience with radical consequences, describing *Freiheit des Gewissens* as a *Freiheit zum Tode*.<sup>117</sup> Vermeulen notes that both in Dutch and German legal practice and theory, the *Bereitschaft zur Konsequenz* ['willingness to accept the consequences'] has become the crucial criterion in judging the conscientiousness of an objection.<sup>118</sup> Though it is understandable that governments wish to prevent abuse of legal provisions for conscientious objectors, the test of objectors' consistency in the form of willingness to accept the consequences does, in my view, bear a certain resemblance to early modern witch-finding practices. If person A is a witch, (s)he will float on water; if (s)he is innocent of witchcraft, (s)he will sink. Hence, innocence is punished.<sup>119</sup> The same applies in the case of conscientious objectors: if you are a real conscientious objector, you are punished with (for example) alternative service that is twice as long as the ordinary military service. Once an objector has completed his period of service, the government can only admit that, in retrospect, given that the objector was genuinely conscientious, the deterrent (i.e. the extended period of service) was in this case useless.

To conclude, it is perhaps appropriate to give some evidence of the importance conscientious objectors themselves often attach to consistency. From his letters, it is clear that Thomas More's position had been the same for a long time. That others called him obstinate only testifies to his consistency. More payed the ultimate penalty for his consistency, which means he remained consistent to the bitter end. Quaker John Smith conscientiously refused to comply with a request to appear at the town house in Dartmouth, where he would enter military service under captain Benjamin Church in defence of the country against 'the French and Indian enemy'. This was on the 15th of June 1703. On January 14th, 1704, he appeared before two magistrates of Dartmouth, where he persisted in his position, so that he was fined five pounds (and three shillings charges).

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<sup>116</sup> Vermeulen (1989), 92. My italics.

<sup>117</sup> Luhmann (1965), 270.

<sup>118</sup> He also remarks that such a criterion was recognized in the thirteenth century, where willingness to accept martyrdom was taken as proof of the activity of conscience in heretics. Vermeulen, 126.

<sup>119</sup> The reader will pardon my use of this caricature of early modern practice. This particular practice was not as common as some people still think, especially in this radical form. People who did not float were often rescued from the water, for example.

“[H]aving a months time to consider whether to pay said fine or not, I found most peace in refusing, for which I was sentenced to prison till payment thereof, where I remained till the general sessions in the second month following, and was then required to pay said fine and charges: but still refusing for the reason aforesaid, proclamation was made in court that I should be hired out to work to any that wanted a hand (...) but none offering to accept my service (...) I was sent to prison again (...). [A]t the end of two weeks, the above said Benjamin Church came and commanded me out of prison, which I refused to comply with...”<sup>120</sup>

Smith epitomizes the consistency of conscientious objectors. His attitude was consistent with his biography, as Luhmann would want to know, and he persists in his refusal no matter what. Dutch conscientious objectors to compulsory military service showed that they realized the importance of consistency both with respect to the past and with respect to the future. Many of them state that they will never be able to kill someone, and that they will persist in their present attitude. They often point out the continuity between their position as a conscientious objector and experiences (of conscience) from their past, like the uneasiness experienced while or after hurting another person. One of them states that he had always had a “revulsion from anything involving human suffering”, which resulted in a strong determination to alleviate people’s suffering in the world. In such ways, conscientious objectors attempt to point out the consistency of the stand they are taking with the life they have lived thus far; in other words: with who they are – the consistency being provided by the ultimate concern that shaped and continues to shape their identity, not exclusively, yet decisively.

### 13.5. CONCLUDING REMARKS

Without being able to give an exact all-purpose definition of conscientious objection, we are now in a position to locate its core and to point out its identifying aspects. Most basically, conscientious objection is objection on grounds of conscience. This is not an appeal to a decisive authority, but rather, like the symbol of conscience itself, a symbolic expression of experiences of conscience that is always an expression of ultimate concern. In this respect ‘religious’ and ‘secular’ conscientious objection do not differ from each other. In both cases the conscientious objector cannot, in view of his or her awareness of the Good, or must, in view of the inspiration received from a vision of the Good, proceed in a certain way. In a political-judicial context, conscientious objection entails an objection to a demand made by another, authoritative, party. From the conjunction of these two elements (the ultimate concern underlying conscientious objection and the

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<sup>120</sup> Brock (ed.) (1993), 34-35.

relationality of the objections) flow certain further aspects of conscientious objection that identify the conscientious objector as such: public reasoning, acceptance of the consequences, and consistency.

Attending to one of the identifying aspects discussed in this chapter, or to a combination of them, and looking through them, as it were, we may discover other aspects of conscientious objection. I have looked at one of them in 13.3.2.2. Concentrating on the expression of ultimate concern through conscientious objection, and on the determination that seems to characterize conscientious objectors, we can see that conscientious objection in fact involves a combination of certainty and uncertainty. The conscientious objector is not typically absolutely sure about the rightness of his stance, but despite his or her doubt (s)he 'can do no other'. This explains why conscientious objection requires courage, and why conscientious objectors have often commanded the respect of people who strongly opposed their views. Depending on the perspective taken, other aspects of conscientious objection may be revealed. In the following chapter, I will look at conscientious objection as a practice in the political-judicial domain, and as a legal category. The background for those discussions will be formed by the aspects discussed in 13.4. Chapter 14, in more concrete terms, will discuss some important relations between conscientious objection, the state, and the law.

## 14. Conscientious objection, the state, and the law

“...the political philosophy of the future will tend in a direction which will more than ever make the appeal to conscience a necessary postulate of social order.”

RICHARD ROBERTS, “The Problem of Conscience” (1919)

### 14.1. INTRODUCTION

The previous chapter highlighted a number of aspects that are central to conscientious objection and constitute criteria to distinguish conscientious objections from other kinds of objection. By no means everything of importance has been said about conscientious objection, however. Conscientious objection is familiar to us as a modern phenomenon that is part of a particular political-judicial constellation. In this chapter, I will discuss some important ways in which conscientious objection is related to law and to the state. I will switch between two perspectives: up to now, I have regarded conscientious objection primarily as a *practice* in a political-judicial domain, and from this perspective we will see below that conscientious objection can be seen as a form of criticism or even protest. If we regard conscientious objection as a *legal category*, and look at it from a metajudicial perspective, a related aspect appears: legal provisions for conscientious objection can be regarded as a recognition of the contingent character of positive law. From the latter perspective, we can discern two further aspects of conscientious objection. The first of these relates to the origins of the phenomenon of conscientious objection in the increasing power of the state; conscientious objection can be seen as an area where the modern increase of state power manifests itself. The second shows conscientious objection to be a ‘legal pressure valve’, an aspect emphasized by Cohen and Luhmann. All four aspects of conscientious objection mentioned above are located on the public, rather than the personal-experiential level.

It is important to note that the aspects discussed below are related to the identifying aspects attended to in the previous chapter. For instance, the critical function of conscientious objection may, in certain contexts, manifest itself most clearly through public justification of the objection; in other contexts, it may be most effective through the conscientious objector’s public acceptance of the (severe) consequences of his or her objection. It is especially through concentration on that aspect (acceptance of the consequences), too, that we may come to see conscientious objection as a ‘legal pressure valve’.

## 14.2. THE CRITICAL FUNCTION OF CONSCIENTIOUS OBJECTION AND THE CONTINGENT CHARACTER OF POSITIVE LAW

### 14.2.1. The critical function of conscientious objection

In his discussion of faith, Tillich states that it contains doubt as an element of itself. “[C]reedal expressions of the ultimate concern of the community,” Tillich says, “must include their own criticism. It must become obvious in all of them – be they liturgical, doctrinal or ethical expressions of the faith of the community – that they are not ultimate. Rather, their function is to point to the ultimate which is beyond all of them.”<sup>1</sup> He names this critical element the ‘protestant principle’. This is not without reason: conscience has an important place in Protestant faith; in a sense, it is the embodiment of the ‘protestant principle’.<sup>2</sup> Conscience functions as a reminder of and a vector pointing towards the absolute, which grounds its critical function in a community. *Within* conscience, the dual structure of faith (encompassing both certainty and doubt), is repeated, as we have seen above. Hence, conscience is critical of the individual as well, in the sense that it demands openness, and willingness to revise one’s principles. Of course, conscience is critical of the individual (its ‘owner’) in a more obvious way as well, ‘forbidding’ all kinds of things we do, are about to do, or consider doing. (In psychoanalytic interpretations, this is in fact all there is to it.) This function has its analogue on a societal level too: conscientious objectors often appeal to principles to which the society of which they are members claims to subscribe. The implicit critique is then that a principle that is accepted in theory is not lived up to in practice. Below, I will discuss both above-mentioned ways in which conscientious objection has or is a critical function, starting with the latter.

Some authors would say it is a mistake to see conscientious objection as embodying a critique of the state and its laws (or the company and its regulations); whether a critique based on more fundamental laws (the Constitution) or not. Childress, for instance, emphasizes that conscience is not a rival authority of the state, but a personal *sanction*. The question with regard to the desired policy with respect to conscientious objectors should be: “When should (or may) we force a person to choose between the severe personal sanction of conscience and some legal sanction?” In Childress’ view, “a state is a better and more desirable one if it puts the presumption in favor of exemption for conscientious objectors”.<sup>3</sup> ‘Exemption’ is the keyword here. Cohen holds a similar view: “The sound principle which underlies conscientious objection is that, in framing its laws, the community should avoid creating situations in which any of its respected members are

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<sup>1</sup> Tillich (1957), 29.

<sup>2</sup> Though, naturally, it often did not and does not function that way in practice.

<sup>3</sup> Childress (1979), 329-330.

necessarily faced with an intolerable moral dilemma.”<sup>4</sup> Needless to say, Luhmann takes a similar view of conscientious objection.

And yet, Cohen’s text also hints at another view. He states that “[p]rovision for conscientious objection is a mark of considerable sophistication in a political community. It indicates that there is a general awareness (...) of the depth of moral disagreements (...). It is (...) an implicit recognition by the community that obedience to certain of its laws might be held, by good and reasonable men, to be a moral evil.”<sup>5</sup> This brings us close to the subject of the contingency of positive law, but I will delay that discussion for a while, as we are still dealing with the other kind of criticism that is (or may be) embodied in conscientious objection, namely: criticism on the basis of widely accepted principles. Cohen notes that conscientious objection is generally thought of in the context of military conscription, and limits his own discussion to that context. Conscientious objection to military service, or to participation in war in any way, is the most universally recognized form of conscientious objection. Why is this so? The most obvious answer seems to be that it appeals to ideas and sentiments that are quite widely shared. As MacCallum notes: “Reference to something *as* violence, though it suggests decisive grounds for abstinence only to rare persons, does suggest grounds for abstinence to most all persons.”<sup>6</sup>

This still does not necessarily mean that conscientious objection is taken to be *criticism* on grounds that most people can relate to. Nor does it mean that conscientious objectors *intend* their objections to entail criticism, rather than a plea for exemption. Below, I will produce evidence that shows that at least some conscientious objectors desire(d) to achieve more than that an exemption be made for them. First, however, I will consider the implications of contemporary state responses to and policy regarding conscientious objection for the topic under consideration.

In The Netherlands, in 1994, a bill was accepted that offered employees with a conscientious objection to certain tasks protection against discharge. The explanation to this bill explicitly defined a conscientious objection as flowing from an “individual normative awareness regarding good and evil”.<sup>7</sup> German law interprets a decision of conscience as “every

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<sup>4</sup> Cohen (1968), 269.

<sup>5</sup> *Idem*.

<sup>6</sup> MacCallum (1993), 180.

<sup>7</sup> *Burgerlijk Wetboek*, art. 681. See also, for instance, the letter concerning civil servants with conscientious objections, sent by the municipality of The Hague to all heads of civil service departments in that city in 1986. Conscientious objections are there explained as follows: “On the basis of his internal conviction concerning good and evil, the person in question may with himself come to the conclusion that certain behaviour is immoral and should thus not be engaged in. This is a purely individual matter.” (*Brief van de Gemeente Den Haag aan de hoofden van takken van dienst*, 29 August 29, 1986.)

serious ethical decision, that is: every serious decision oriented towards the categories of ‘good’ and ‘evil’ (...), that the individual in certain circumstances inwardly experiences as binding for himself and unconditionally obligating, so that he cannot act contrary to them without serious qualms of conscience”.<sup>8</sup> This means that to be eligible for the status of conscientious objector, one must accept this definition of conscience as ‘an individual normative awareness’ that is (experienced as) ‘binding for himself. I know that some people do not recognize themselves in such a definition of conscience.’<sup>9</sup> In Walzer’s view of conscientious objection, the definition even fails to make sense at all, as for him “commitments to principles are simultaneously commitments to other men, from whom or with whom the principles have been learned and by whom they are enforced”.<sup>10</sup> The least we can say, then, is that conscientious objections are *socially* transcendent – their meaning transcends the individual, extending to (and belonging to) a social group, even if it is true today that demarcations between such groups are less clear than they have been, and that individuals are often members of several groups rather than a single identity-defining one.

Richard Roberts begins his article “The Problem of Conscience”, published just after World War I, with an extensive quotation by Cardinal Newman. Newman explains that in the event of a clash between his obligations to the Queen and the Pope – none of which were absolute – his own conscience would, after ample consideration and gathering of advice, have to decide in the matter. Roberts contrasts this with the situation of the C.O. in his time:

“Newman postulates a conflict of loyalties to two societies, whose requirements are at a given point antagonistic, before invoking the arbitrament of conscience. The conscientious objector is, however, conceived as setting his own private judgment against the will of the only society to which he owes allegiance. (...) But in point of fact, the

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<sup>8</sup> The German reads: “jede ernste sittliche, d. h. an den Kategorien von ‘gut’ und ‘böse’ orientierte Entscheidung (...), die der Einzelne in einer bestimmten Lage als für sich bindend und unbedingt verpflichtend innerlich erfährt, so dass er gegen sie nicht ohne ernste Gewissensnot handeln könnte”. (Unless otherwise stated, translations are my own.) See Schockenhoff, (2003), 15-16. Compare also Sweden, where, in laws concerning conscientious objection, the phrase ‘conscientious doubt’ was replaced by ‘deeply held / serious personal convictions’ (and the further criterion that conscription would lead to ‘deep moral conflict within’ the C.O.), by which conscience loses all possible claims to objectivity. See Adelswärd (1998), 441. Recent concepts of conscience also tend to emphasize its subjectivity; see, for instance, Childress (1979), 318: “Conscience is personal and subjective (...).”

<sup>9</sup> See 15.3.

<sup>10</sup> Walzer (1967), 164.

conscientious objector as a rule bases his action on the ground of loyalty to a certain view of human relationships, that is to say, to a social ideal...<sup>11</sup>

Roberts feels that something has changed in this respect; the state in his time had acquired a power and authority that was unprecedented:

“But it seems to be generally assumed in all popular political thinking to-day that our loyalty to the state should be not only first but absolute over all the other loyalties of life. In our day, this view has received, particularly in democratic communities, a subtle and plausible reinforcement from the growing emphasis upon the fact of social solidarity with its implication that the consensus of the community fixes the norm of conduct. A man’s conscience should (...) reflect the collective conscience of the society.”<sup>12</sup>

In post-modern society, the social demand that the individual conscience should reflect the collective conscience of society means that it should not be informed by the teachings of a traditional religious group, but rather be ‘autonomous’ and personal. Much confusion is involved in such ideas, and in effect it means that people will simply be less aware of the factors that influence(d) and shape(d) their conscience. Nevertheless, popular views like these inevitable influence state policy.<sup>13</sup>

With a view to the above we may consider the definition of conscience as ‘individual’ and exclusively binding for the subject in question as part of a *strategy to render conscientious objection harmless*. Firstly, it entails that the objector’s only loyalty is to the state and society as a whole. Secondly, what the state in fact demands is that people accept that the dictates of their conscience are *exclusively* valid for themselves. Their validity cannot reach beyond the subject.<sup>14</sup> Hence, an individual’s dictates of conscience can never challenge the state. All they can do is forbid one particular person to obey. They cannot call the law itself into question; they cannot question the authority of the state. They cannot seriously influence other people, because they are accompanied by a notification: only valid for this subject. In short: the individual conscience, distrusted throughout history and feared for its supposed subversiveness, is in its modern subjective form in fact an

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<sup>11</sup> Roberts (1919), 334.

<sup>12</sup> *Ibid.*, 336.

<sup>13</sup> See the following chapter for more on the popular view of conscience.

<sup>14</sup> I do not disagree with the fact that my conscience cannot forbid another person to do something; I object to the relativism that seems to lurk in the background. Too much emphasis is placed on the fact that it is an ‘individual’ normative awareness, ‘inwardly experienced’, et cetera. I maintain that the ‘individual’ conscience may reveal moral insights that in themselves are not limited to the subject in question. Even apart from this possibility, however, it must be recognized that most people’s conscience will be ‘intersubjective’ to a high degree, in the sense that its ‘dictates’ are shared by others.



exceptionally *non-revolutionary* conscience.<sup>15</sup> It is obvious, then, why states might want people to have such a conscience, and even define conscience exclusively in such terms. This strategy attempts to eliminate the critical potential conscience is seen to have. Dutch and German law go beyond the statute of French Law that “allows all those who, for religious or philosophical reasons, oppose in all circumstances the personal bearing of arms, to satisfy conscription requirements by serving either in a noncombatant group or a civil ‘formation’.”<sup>16</sup> Not only are the ‘dictates of conscience’ exclusively binding for the individual; conscience itself is said to be a subjective phenomenon. Conscience cannot even be said to be objectively binding for an individual; it is only subjectively experienced to be so. Hence, conscientious objection becomes isolated, preventing it from becoming a social force.

The latter has also been attempted by more material means. In 1978, in former West Germany, an unsuccessful attempt was made, Mellors and McKean write, “to militarise’ alternative service by putting objectors in barracks with curfew and other restrictions”.<sup>17</sup> The United States knew such camps until 1951. France had them in the sixties of the previous century. Cain reports: “Alternative civilian services must be performed in camps. Authority over these camps was transferred from the military to that of the Ministry of Interior, but the camps are still under a military cadre of three officers and seven noncoms.” After a relatively lenient start, restrictions were tightened: “more inspections, censorship of reading material, and denial of participation in groups having a political or religious character.”<sup>18</sup> Mellors and McKean note that “[s]ome French sceptics have argued that the (...) service with the *Office National des Forêts* is intended as a dispersal measure, to keep potential agitators away from sensitive city areas”.<sup>19</sup> While Cain writes that “the French still consider the CO a public offender who must be punished in some way”, Mellors and McKean tell us that in Finland, “objectors are put into battalions with convicts and the socially

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<sup>15</sup> This is the exact opposite of the common view, which is that “[t]he new conscientious objection is a much more complex challenge to armed forces and society than the old” (Moskos and Chambers [1993], 20). The ‘new’ conscientious objection is hardly a challenge at all. Both society and the state have encapsulated its critics. On the positive side, this means that conscientious objectors are no longer (fully) ‘excommunicated’; on the negative side, it means that a potential stimulus to critical self-reflection has been removed.

<sup>16</sup> Cain (1970), 282.

<sup>17</sup> Mellors and McKean (1982), 232.

<sup>18</sup> Cain (1970), 283-284.

<sup>19</sup> Mellors and McKean (1982), 234.

maladjusted”.<sup>20</sup> William Fifield, writing from an American C.O. camp in 1945, noted the following:

“Canada believes in separating CO’s rather than segregating them in groups, and intentionally gives them no publicity. Thus the general public is not aware they even exist, and they have little chance to organize for pacifist group action.”<sup>21</sup>

In a relatively recent past, then, some countries that we generally consider to be quite civilized criminalized their conscientious objectors.<sup>22</sup> Criminalization was not common practice in all European countries.<sup>23</sup> The more subtle approach was through the individualization of conscientious objection as described above. Neutralization of the critical potential of conscientious objection, at any rate, is a desired goal of state policy, and would be the consequence of an entirely successful state strategy.

Naturally, the success is incomplete. Sometimes, conscientious objection *is* intended as criticism, and aims at reform. In some situations, it *can* be a critical force. McCloskey recognizes the critical function, not only of civil disobedience, but also of conscientious disobedience:

“Sometimes, less often than is desirable, conscientious disobedience leads to changes, to reforms in the laws, to constitutional changes, to the establishment of a just constitution with just laws. In these cases the conscientious disobedience may achieve these results by preparing the ground for revolutionary disobedients, and the revolutionary disobedience, but it may achieve such results without such revolutionary activity occurring.”<sup>24</sup>

The second sentence serves to support her claim that the popular idea that allowing conscientious objection will lead to instability and anarchy is nonsensical. Conscientious disobedience may have (or be) a critical function,

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<sup>20</sup> Cain (1970), 284; Mellors and McKean (1982), 233. For similar remarks about the French situation in the late 1980s, see Martin (1993), 94.

<sup>21</sup> Fifield (1945), 191.

<sup>22</sup> Cf. Hobhouse (1917) on criminalization of conscientious objectors in Britain during the Great War. In Switzerland, it took until 1987 until the government introduced a bill to ‘decriminalize objectors for conscientious reasons’, which was accepted by referendum in 1991; see Haltiner (1993), 141. On criminalization of C.O.’s in New Zealand in World War II, see Fifield (1945), 192.

<sup>23</sup> Absolutist objectors are virtually always sentenced to imprisonment, sometimes repeatedly and without limit to the number of repetitions. The United States, for instance, incarcerated 5000 objectors in World War II, more than 3000 of which were Jehovah’s Witnesses; thousand were also imprisoned during the Vietnam War. See Chambers (1993), 38 and 41.

<sup>24</sup> McCloskey (1980), 550.

but “[f]ew authoritarian governments have been reduced to anarchy as a result of conscientious disobedience”.<sup>25</sup> Mellors and McKean also note that the political form of conscientious objection has had ‘some impact’, “since military authorities cannot be wholly deaf to the critical expressions of serving soldiers who are not convinced of the justification of the tasks they are called upon to perform.”<sup>26</sup> They perceive this impact in the context of U.S. conscripts in Vietnam, as well as in that of British policy with regard to Northern Ireland, a policy that “might be difficult to pursue with a conscript army”.<sup>27</sup> That at least some conscientious objectors are not satisfied with an exemption for their own person is evident from some of the testimonies recorded in Goodall’s *A Question of Conscience*. Eric Dott (C.O. in the Great War) recalls that, though he is ‘not so sure know’,

“I did very much think at the time that this was the only way to help prevent future wars, to register my protest as a CO that war was wrong and that I would take no part in it and hoping that in the future that view would prevail and perhaps future wars would be prevented by a growing number of COs until they couldn’t get enough soldiers to fight.”<sup>28</sup>

British conscientious objectors in World War I sometimes accepted service in the Non-Combatant Corps, which meant that they could communicate with the public. W.H. Eaton says:

“Wherever we go, at first we are looked upon as some special, suspicious kind of beings but in due time when people know us we are generally respected and in some cases admired. We are certainly bearing testimony to our beliefs and we hope seed will fall upon good ground and bring forth fruit in other lives that will be determined to stand for peace – and against bloodshed and war.”<sup>29</sup>

Similar statements occur in the Dutch C.O. files I studied. One applicant hopes that his decision to apply for conscientious objector status will contribute to the mentality change he advocates heart and soul. Another believes that we can realise a peaceful society through talking and negotiation, and though he knows that goal is still far away, he believes he can make a step in the right direction. In general, even when these Dutch applicants for conscientious objector status have no other intentions than to get exempted, they tend to formulate the support for their applications as

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<sup>25</sup> Idem.

<sup>26</sup> Mellors and McKean (1982), 229.

<sup>27</sup> Idem.

<sup>28</sup> Goodall (1997), 7.

<sup>29</sup> Ibid., 18.

criticism of government policy. The same arguments recur time and again; it is evident that they were widely shared at that time.<sup>30</sup>

The criticism that is sometimes implicit, sometimes also explicit in the examples of conscientious objection adduced above, refer to widely shared principles. Most people can relate to objections against killing other human beings, only they do not reach the same ‘radical’ conclusions. Especially in the case of conscientious objection against a particular war, however, it may very well be that it makes people think more thoroughly about the legitimacy of that war (and maybe of war in general). Thomas More also referred to principles accepted by the party he was (in this particular point) radically opposed to. Not only did he refer to the ‘one corps of Christendom’, to the authority of the Church and to natural law; he also specifically referred to King Henry’s own words:

“[T]he first time that I ever heard that point moved, that it [the King’s marriage] should be in such high degree against the law of nature, was the time in which (...) the King’s Grace showed it me himself, and laid the Bible open before me, and there read me the words that moved his Highness and divers other erudite persons so to think...”<sup>31</sup>

“[H]e [the King] graciously declared unto me that he would in no wise that I should other thing do or say therein, than upon that that I should perceive mine own conscience should serve me, and that I should first look unto God and after God unto him, which most gracious words was the first lesson also that ever his Grace gave me at my first coming into his noble service.”<sup>32</sup>

More, then, defends himself by reference to the King’s own previous position, implicitly criticizing his inconsistency. In fact, it is not *More* who should be explaining and defending himself, it is the King and all those people who (in such a short time) changed their views upon the matter – but that is not something More could say, of course. More may have hoped that this was something the King and his advisors would be sensitive to: the King’s own words. Reasonable though this was, it did not work.

#### **14.2.2. Conscientious objection and the contingency of positive law**

It is not always easy to distinguish this form of conscientious objection, which appeals to principles that are commonly known and commonly and/or officially subscribed to, from conscientious objection that appeals to

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<sup>30</sup> By which I do not refer to the phenomenon of more or less standard letters that circulated, which many applicants in later years made use of, and which accounts for the uniformity of part of the application letters.

<sup>31</sup> De Silva (2000), 50.

<sup>32</sup> *Ibid.*, 51.

less accepted principles, because it is not clear what ‘acceptance’ of principles means. I suppose that many Americans in Martin Luther King’s time subscribed to the principle of equality, while excluding Afro-Americans and Native Americans from its scope. Did the black woman who refused to sit in the back of the bus appeal to a principle that was accepted in theory, but not applied in practice? That seems rather far-fetched. One *could* argue, perhaps, that, were one to drive the theoretically accepted principle of equality to its logical conclusion, one would have to agree with the woman. It seems clear, at any rate, that there are situations where conscientious objectors find themselves relatively alone, making a stand for principles virtually no one seems to recognize – even if they still ‘hang around’ somewhere, covered under thick layers of dust.

In such cases, when conscientious objection really goes against the grain, it appears most clearly as a reminder of the contingent (in the sense of ‘non-absolute’) nature of dominant morality and/or of positive law. A conscientious objector under the German Nazi regime, heeding a Heideggerian Call of Conscience (one that Heidegger himself, perhaps, did not hear or heed too well), a call to authenticity, away from the inauthentic life among ‘das Man’ [‘the They’], would be an example of this kind of conscientious objection – in a conscientious-objection-unfriendly context, obviously. But we must not forget that *any* kind of conscientious objection serves as a reminder of the contingent nature of positive law, being at variance with it by definition. It may be treasured as such by states themselves. It is from a detached perspective, regarding conscientious objection not through the eyes of the objector, but instead with a view to its function as a legal category, that we can see conscientious objection as a reminder and recognition of the contingent character of positive law. No objection is intended as such a reminder by the objector, even if it is intended as criticism. Nevertheless, from a metajuridical perspective it serves a more abstract purpose: to prevent legal or political absolutism – which in Western states is a goal they set themselves (even if they seem to circumvent it on other occasions).<sup>33</sup> There is obviously a tension between this abstract goal and the way states have attempted and in some cases still attempt to deal with the concreteness which is the other side of the abstract recognition of the contingent character of positive law. A state that recognizes human rights and does not consider itself absolutist will want to and have to allow for conscientious objection; it will not want this to have social impact as a critical force.

Cohen sees provisions for conscientious objection as ‘a mark of considerable sophistication in a political community’, appropriate to the ‘complexity of human activity’, which precludes the absolute validity of all-

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<sup>33</sup> Cf. Heisler (1952/1953), 460.

or-nothing ‘sweeping generalizations’ in law.<sup>34</sup> In his view, the presence of provisions for conscientious objection “indicates a general awareness, in [a political] community, of the depth of moral disagreements”. He sees it as “an implicit recognition by the community that obedience to certain of its own laws might be held, by good and reasonable men, to be a moral evil”.<sup>35</sup> Cohen’s view as it is stated here allows for conscientious objection to be considered as a self-critical function of the political community and its legal system in two ways. Firstly, it may be considered as a self-critical function in an at first sight relatively limited sense, where only the law’s *one-sidedness* is under criticism, and conscientious objection is a recognition of moral *plurality*. Cohen takes this pluralistic stance.<sup>36</sup> Secondly, in a stronger sense, conscientious objection can be seen as a recognition of the *fallibility* of the law – which means, from the side of the objector, that it would be a critique of law with a view to its *correction*. Positive law, being a human product, is in constant need of revision, not only to adapt to changing circumstances, but also to remove injustices and to correct oversights that are inevitably there. Again, these two poles are not too far apart. A correction may entail the redressing of one-sidedness in an area of law where this is possible. The idea that a certain law at a particular moment needs to be corrected may sometimes originate from the fact that primacy is given to another value than the value that receives primacy in this law, but it need not. To say that that is necessarily the case would entail a moral relativism I cannot subscribe to.<sup>37</sup>

We must also distinguish, with Cohen, between conscientious objection *with* recognition of the legitimacy of the law (i.e. the laws relevant in the context of the conscientious objection, as for instance conscription laws), and conscientious objection *without* such recognition. The first is ‘wholly lawful’, in Cohen’s words, the second is not, and takes the form of civil disobedience.<sup>38</sup> We tend to think of conscientious objection as having the first form, but in countries where there are no provisions for conscientious objectors, it necessarily assumes the second. Also, most people are familiar with the phenomenon of the ‘absolutist objector’ who refuses to comply with the procedures designed to deal with conscientious objectors to

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<sup>34</sup> Cohen (1968), 269, 278.

<sup>35</sup> Cohen (1968), 269.

<sup>36</sup> Walzer, as might have been expected, comes up with a pluralistic view as well: “The very existence of such people [conscientious objectors/nonconformists] – even more, their obvious moral seriousness – ought to call into question the conventional definition of citizenship as involving an absolute commitment (it is sometimes said, ‘under God’) to obey the laws. (...) For the processes through which men incur obligations are unavoidably pluralistic.” (Walzer, [1967], 170).

<sup>37</sup> Naturally, moral pluralism can be accepted without relativism. To say that the idea of moral correction can only derive from adherence to other (not better) values, however, *does* involve relativism.

<sup>38</sup> Cohen (1968), 271-272.

military service.<sup>39</sup> The reason for such a refusal is usually that the objector does not wish to cooperate with the state in any way pertaining to the military. To cooperate would mean to recognize the legitimacy of the law they oppose, and to affirm the authority of the state in this matter.<sup>40</sup> Absolutist objection is thus far more critical than ‘ordinary’ conscientious objection, which can be said to be an affirmation of the legitimacy of the law and the authority of the state. Insofar as the objector demands nothing more than an exemption for himself, in other words: that an *exception* to the rule be made for him or her, he or she affirms the rule.

A final observation in this section is that there is an interesting paradox at work, relating to the critical function of conscientious objection. What allows conscientious objection to have a critical potential is not just the fact of its occurrence, but also the previously discussed demand for public reasoning. Were conscientious objectors not expected and asked to explain their stance, to articulate it in terms that others might understand, it could hardly be perceived as criticism, and neither would it do much to make people think about the matter in question. So with a view to concrete criticism, and seen from the state’s perspective, reasoned support for a conscientious objection might not be desirable. On the other hand, the demand for such reasoning serves as a criterion of selection, limiting the number of acceptable applications for the status of conscientious objector. Hence, it provides an advantage as well as a disadvantage to the state.

### 14.3. CONSCIENTIOUS OBJECTION AND STATE POWER

In part II of this book, on freedom of conscience, we have seen how Koselleck, in *Kritik und Krise*, elucidates the relation between freedom of conscience and the rise of absolutist states. A similar connection can be pointed out more concretely for the phenomenon of conscientious objection. The Quakers I have referred to in the previous chapter, Richard Seller and John Smith, were victims of a state with absolutist pretensions. In the seventeenth century, in a time of war, they were forcibly taken aboard marine vessels. Richard Seller was press-ganged into the navy; in John Smith’s case, more elaborate procedures brought him on board. The methods used in Smith’s case were less crude than those adopted to ‘recruit’ Seller, but they required much more organization. Smith was notified to appear at an appointed time and place, where he would commence his service. His refusal led to imprisonment, and a court ruling that he “should be hired out to work to any that wanted a hand, for any time not exceeding four years, in order to satisfy said fine [a fine laid upon him by Bristol

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<sup>39</sup> Cain (1970), 289.

<sup>40</sup> Cohen (1968), 272.

magistrates] &c".<sup>41</sup> No one offered to employ him; hence, he was sent to prison once more, from which he was forcibly removed by captain Benjamin Church, without the required governor's order. Until that removal, however, the whole procedure had an aura of legitimacy about it. Whereas Seller was simply beat up and hoisted on board a ketch that would bring him to the vessel *Royal Prince* – in other words: whereas Seller was kidnapped in bandit-fashion, Smith was called to service, and upon his refusal treated as a disobedient citizen, as someone who broke the law. Seller's 'recruitment' did not feign legitimacy; Smith was seemingly dealt with in accordance with legitimate procedures. The state used its *power*, in the basic sense of brute *force*, to get its own way in Seller's case. With Smith, it exercised its *authority*. In another sense of the word 'power', this can be seen as a sign of greater state power: the state is not only able to recruit men for military service, it is also able to present this as its legitimate right, a right to control the lives of its subjects. In the American Civil War, both the Federal (Union) and the Confederate authorities introduced conscription, and got to deal with conscientious objectors.<sup>42</sup> In the twentieth century, an increasing number of states introduced the draft.<sup>43</sup> At the same time, conscientious objection became a more and more common and proportionally proceduralized phenomenon.

Whereas conscientious objection is regularly seen as a limitation, even an undermining, of state power, in view of the above it seems more appropriate to emphasize its coincidence with increasing state power.<sup>44</sup> Modern Western states have the power to absorb criticism into itself.<sup>45</sup> (From a societal point of view, and approached from a positive angle, this also means – in theory, at least – that conscientious objectors are not ostracized.) Conscientious objection constitutes the exception to the rule, and must therefore be considered an affirmation of the rule. Moreover, it is regulated by strict procedures. The fact that legal provisions for conscientious objectors to military service exist, does not call into question the state's right to claim part of a person's lifetime for military training. Instead, it affirms that right and even constitutes it as that which normally obtains.

Given the fact that modern Western states are not absolutist states, however, it is possible that a state's right to call upon its subjects for military

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<sup>41</sup> Brock (ed.) (1993), 35.

<sup>42</sup> The story of a Garrisonian conscientious objector who was forced into the Union army is recorded in Brock (ed.) (1993), 47-63.

<sup>43</sup> With respect to the authority of the state at the time of World War I, see the quotations from Roberts (1919) in the previous subsection.

<sup>44</sup> Vermeulen provides a clear example of the first view. This view is strongly criticized by (for instance) McCloskey.

<sup>45</sup> Much like major companies in the music industry have absorbed much politically engaged and sometimes explicitly anti-capitalist music.



service is called into question. In the Netherlands, the draft was abolished in the last decade of the previous century.<sup>46</sup> An increasing number of applicants for conscientious objector status played a role in bringing this about. The resulting change in the draft laws had more to do with the opportunities that procedures dealing with applicants allowed, then with a supposedly law-undermining effect of provisions for conscientious objectors in general. More about this subject will follow in the next chapter.

#### 14.4. CONSCIENTIOUS OBJECTION AS A 'LEGAL PRESSURE VALVE'

The dominant perspective taken by Luhmann in his approach to conscientious objection is a perspective from its function in the social system. It is seen as a legal category, rather than as a practice of conscientious objectors (though Luhmann can take that perspective as well), and the existence of this legal category is seen as a protective device, ensuring the stability of the social system. Cohen expresses a similar view when he speaks of conscientious objection as a 'legal pressure valve'.

The general idea is that provisions for conscientious objectors provide a way to relieve rising tensions within persons (or personal systems), as well as between persons and the state (but the same could hold for companies or other entities instead of states). For example, when a young man is called up for military service, but feels that he cannot in good conscience fulfil this legal duty, tension arises first within himself, but soon also in his social environment, which may be hostile towards conscientious objectors. Where no provisions for conscientious objectors exist, a conflict between the objector and the state will ensue. This will cause greater tension within the objector, as well as in his social environment. There will generally be people who criticize him, and those who care for him might also suggest that he comply with the state – though it might be argued that those who *really* care for him will support him in his position. Also, assuming he worked for an employer, this employer will know what is going on by now, and might fire him. All such things have happened to conscientious objectors; they are not uncommon. If he persists in his objection, imprisonment will follow. Some people in the objector's environment will support the state in this; others will be embittered. This is a plausible scenario where no provisions for conscientious objectors exist. Where they *do* exist, tensions will not rise so high. The objector is not (or at least not so much) contaminated by the aura of criminality, and at any rate not by that of illegality. This will have its impact on the way acquaintances, employers, family and friends react. Instead of confinement in an uncomfortable cell, the state will offer the objector alternative service, that he will (possibly) be able to accept in good conscience. The whole procedure will in most cases

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<sup>46</sup> This is a simplification, but an unproblematic one in the present context.

still involve tensions of many kinds, and will still cause a certain unrest in the objector's social environment, but it will not by far be as socially disruptive as in the first scenario. Hence, the legal category of conscientious objection functions as a mechanism to preserve the stability of the social system.

It does so in another way as well. We have seen that one interest the state has in conscientious objection lies in minimizing the critical potential of dissenters. A state that does not allow for conscientious objection in certain contexts, that is unwilling to make exceptions for individual persons, will have to deal with the inevitable dissenters in another way. The other way around: conscientious objectors will have to respond to the state in another way, which might be the way of dissent in the full sense of the word. The state will then face criticism in the form of public protest – with far stronger socially destabilizing effects than regulated conscientious objection.<sup>47</sup>

That conscientious objection has this aspect, that it can be seen as a 'legal pressure valve', depends on some other aspects we have discussed earlier. Most notable are those of acceptance of the consequences and consistency, but these in turn are closely related to the ultimacy of the objector's concern. Reflection on these aspects from the perspective of the stability of the social system – we might also say: from a metajudicial perspective, or, in this case, from the perspective of conflict – leads to the above considerations. Note that the idea of a 'legal pressure valve' by itself is not sufficient to distinguish conscientious objections from nonconscientious ones. It may provide an argument for accommodating certain nonconscientious objections as well, but if we only wish to accommodate conscientious objections, we need to look for the reasons why legal provisions for conscientious objection may serve as a 'legal pressure valve'.

#### 14.5. CONCLUDING REMARKS

I have discussed a number of important aspects of conscientious objection, especially in its modern or post-modern form; conscientious objection has always borne a relation to state power (or occasionally the power of some other party), but only when the practice became institutionalized (primarily with regard to compulsory military service) did it become that exception to the rule and that affirmation of state power it is today. Only then, too, did it really become that legal pressure-valve of which Cohen spoke. By looking at conscientious objection from a different angle and with a different aim than

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<sup>47</sup> Cf. Roberts (1919), 337: "Even more so do the stability and growth of democracy depend upon its recognition of the inviolability of the individual conscience; for democracy cannot live except its roots be deep struck in the moral nature of man. (...) Even in time of war, it is safer for democracy to let a hundred shirkers go scot-free rather than run the risk of penalising an honest conscience."

in the previous chapter, I believe our understanding of the phenomenon has increased. The resulting picture, I think, is not fragmented but rather layered.

Naturally, I still have not even come close to saying all there is to say about conscientious objection. Other aspects might be pointed out. Someone might say that conscientious objection is most poignantly a last resort; the conscientious objector only resorts to it when he has run out of options, when “attempts to convince others of the objective rightness of his act” have failed and he “is content to assert its subjective rightness”.<sup>48</sup> There may be some truth in this, though in the case of conscientious objection to military conscription no attempts to convince the state of the objective rightness of pacifism will enter into the situation. In such cases, for the objectors concerned, conscientious objection is not so much a last resort, but rather the obvious way to go about it – the beaten path, so to speak. Only from a macro-perspective can such provisions for conscientious objectors be considered a last resort.<sup>49</sup> Moreover, the experience of conscience enters into the situation from the beginning. As soon as the objector-to-be is faced with the objectionable demand, (s)he will be thrown into the mode of consciousness we call conscience. This does not mean that to appeal to conscience will be the first thing to do, but it is important to see that the experience of conscience is present from the beginning, and that the appeal to conscience naturally flows from that experience. To recognize this prevents one from coming to believe it is just a dodgy artifice to get one’s way, or an attempt to kill all discussion of the subject in question.

Alternatively, it might be suggested that conscientious objection is best seen as a compromise between a scrupulous individual and an authoritative party that has to balance the importance of having individuals comply with their demands with that of the well-being of individuals and the stability of its organisation. Or, it might be seen as a compromise in the sense that legal provisions for conscientious objectors provide the means to arrive at a solution that both parties can agree with. Compromise is then the process by which the parties arrive at a solution.<sup>50</sup> In some cases conscientious objection might be seen as a compromise in either of these senses. It is more likely to be a compromise in the second sense than in the first, however. It is certainly not necessarily the case that the result reached is such that both parties meet in the middle – splitting the difference, in Benjamin’s terms. Also, it is only a compromise in the first sense if both parties must concede something of what they insisted on at the beginning. A

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<sup>48</sup> Childress (1979), 329.

<sup>49</sup> Fifield (1945), 191, provides an indication that states may consider conscientious objection as a last resort: “The total number [of conscientious objectors] in the country [i.e. the United States] cannot be determined because CO classification is not considered until all deferring classifications have been exhausted (...).”

<sup>50</sup> See Golding (1979), esp. 7; Kuflik (1979), 39; Benjamin (1990), 4-8.

'conchy' that could in good conscience fulfil noncombatant service may still not have liked doing so, but he did not have to 'dilute' his conscience in any way. So there is no moral compromise here, but only a compromise between the interests of both parties. To absolutist objectors, the notion of moral compromise rings like a third kind of compromise: to compromise one's integrity, to betray one's principles. The notion of a moral compromise is in itself not contradictory, however, even if one has to know with which principles one can compromise and with which one cannot.<sup>51</sup> Benjamin enumerates various circumstances of compromise: factual uncertainty, moral complexity, the need to maintain a continuing cooperative relationship (a circumstance that is not present in the case of many conscientious objectors), the need for a more or less immediate decision or action, and a scarcity of resources.<sup>52</sup> Many of these tend to be present in cases of conscientious objection.

Just after World War I, T.H. Procter noted that "[p]acifism was much more widely spread in pre-war England than the number of Conscientious Objectors would indicate. (...) One of the extraordinary things about the war is the large numbers of really conscientious pacifists, who, whilst preserving to the end their condemnation of war, enlisted, not from compulsion but from motives that can rightly be called moral." Procter distinguishes between two such motives: "One was the feeling that a man ought to enter into the brotherhood of suffering. (...) This was the less exalted of the two motives that determined the pacifist to lay aside his philosophy. (...) The others joined because they did not think they had earned the right to be pacifists in wartime. They had been convinced in theory that war is wrong, but had never actively opposed it."<sup>53</sup> This exemplifies the moral complexity of certain situations. If it could lead some men to join up despite their pacifism, is it strange if there were conscientious objectors who accepted noncombatant service, even if they still felt scruples about supporting the war effort in this way? There were surely have been such cases; such moral compromise is a genuine possibility, incomparable, for instance, to those sixteenth-century Polish Brethren who refused military service but gladly paid war taxes with which others could be hired in their stead. This was already unmasked as hypocrisy by contemporary critics.<sup>54</sup>

Even if conscientious objection can be seen, in some cases at least, as a last resort, or as a compromise, it seems to me that these are not the most central aspects of the phenomenon, whether regarded as a practice or as a legal principle. The fact that not all conscientious objection can be seen as a last resort or a compromise aside, there is still a clear difference between

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<sup>51</sup> Kuflik (1979), 48-52; Benjamin (1990), ch. 1 (12-20) and chapter 2.

<sup>52</sup> Benjamin (1990), 26-32.

<sup>53</sup> Procter (1920), 30.

<sup>54</sup> Brock (1992), 675.

the aspects discussed in the course of this and the previous chapter, and these two (suggested) aspects. Whereas the former either are crucial in the identification of conscientious objection, or go to the heart of the phenomenon in some way or another, the latter do not. Nor are they meaningfully related to the ultimate concern that is at the core of each conscientious objection.

We have seen, in chapter 13, what distinguishes conscientious objections from ‘ordinary’ ones: they express ultimate concern in its aspect of the Good; they are articulations of what gives meaning and direction to someone’s life, of someone’s conception of what it is to be a good person. In this chapter, I have broadened the perspective to get into view the relations between conscientious objection (as a practice and as a legal principle), the state, and the law. Undoubtedly there are matters of relevance to the topic that have remained undiscussed. The connection between conscientious objection and personal and moral integrity is one of them; I will attend to this in the next chapter, in which at the hand of two case studies I hope to deepen the understanding of conscientious objection gained so far.

## 15. Two case studies

### 15.1. INTRODUCTION

This chapter contains two very different case studies. One concerns conscientious objections to military conscription in the Netherlands, the other focuses on one individual's conscientious objections: those of a registrar, who refused to marry a gay couple.<sup>1</sup> The first case is an instance of far-reaching institutionalization, the second one of improvisation. Conscientious objections to military conscription, especially in conscription's later years, were often secular in nature; the registrar's objections were outspokenly religious. Despite these differences they fall under the same heading: conscientious objection. Salient features of both cases will be discussed, particularly (though not exclusively) with a view to the question as to the distinction between conscientious objections and other ('normal') objections. In both cases, I have allowed myself to be led by their peculiar characteristics as they struck me from the perspective of my approach to conscience and conscientious objection. For the case of military conscription, this meant that my attention was drawn to aspects of proceduralization and their implications for the perception and evaluation of conscientious objections. It can be considered as an illustration to, and a development of, the theme of chapter 14. In the case of the conscientious objector to marrying a gay couple most interest lies in her own story. It brings us as close as we can get to her experience of conscience; it shows us a conscientious objection 'from the inside'. Also, it allows us to see how the approach to conscience offered in this book differs from other approaches with respect to the attention paid to people's self-interpretation.

Both cases relate to the problem of the legitimacy (or the foundation) of conscientious objection in their own way. The development of legal provisions for conscientious objectors to military service and the large increase in appeals to conscientious objector status in the last decades of conscription in the Netherlands problematized the concept of conscientious objection and the underlying concept of conscience. In the second case, the legitimacy of conscientious objection (by civil servants) *to gay marriage* was under discussion. Moreover, reactions to the case regularly questioned the legitimacy of the *contents* of the conscientious objections put

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<sup>1</sup> Both are Dutch examples, but for practical reasons only. The Dutch situation is not remarkably different from that of other Western democratic societies. Moskos and Chambers (1993) rightly note that conscientious objection to military service follows the same pattern in all such societies. There are national differences, of course – a case of conscientious objection to gay marriage can only occur where such a marriage is legal, for instance – but the conceptual difficulties relating to conscientious objection are not peculiar to the Netherlands.

forward. These were often not understood; in part, people may have been unable to see why conscientious objections in general, if they could be *such* objections, should receive any privileged treatment. Even if such questions were not openly asked, both cases provide enough reasons for philosophers to reflect on the legitimacy of conscientious objection as such, which is what this book is about. I use these case studies – of cases that indirectly problematized the legitimacy of conscientious objection – to get closer to a philosophical foundation of conscientious objection.

The chapter falls into three parts: 15.2 concerns the case of the last ten years of military conscription in the Netherlands; 15.3 deals with a case of conscientious objection to gay marriage; 15.4 draws together the main insights gained from the foregoing discussions, and places them in the context of the general problematic with which this book is concerned.

15.2 starts with a brief overview of the Dutch history of conscription and conscientious objection. Then, in 15.2.1, I focus on the ‘filter of the law’, the criteria on the basis of which the law distinguishes between conscientious objections eligible for recognition (or conscientious objectors eligible for exemption) on the one hand, and both conscientious and nonconscientious objections that are ineligible for recognition on the other. In 15.2.2 I discuss problems of institutionalization (like, for instance, proceduralization). 15.2.3 draws attention to the influence of psychologizing conceptions of conscience on the way conscientious objection to military service was dealt with both in practice and in theory. Psychologization of conscience (and hence, of conscientious objections) entails that the intentionality of conscience (in my broad sense of the term) recedes into the background. That conscience is in the world and concerned with it goes unrecognized; instead conscience is thought to be concerned with the self alone. As a result, the importance of conscientious objection is either missed or mislocated. I contrast psychologizing views with my own, in order to recover what was lost from sight.

15.3 begins with an introduction into the subject of gay marriage in the Netherlands, and (discussions about) conscientious objection to gay marriage. It summarizes the juridical background of the case; that is, it gives an overview of all juridically relevant documents and statements to which parties in the conflict could appeal. I then zoom in on the Eringa-Boomgaardt case. I start with an overview (15.3.1), and then I zoom in further on her own story (15.3.2). In 15.3.3 I discuss Eringa-Boomgaardt’s conscience and conscientious objection, drawing on her story, and using the approach to conscientious objection developed in chapter 13. Finally, I use Eringa-Boomgaardt’s case to make a point I touched upon earlier, but did not explore as thoroughly: that the primary concern of the conscientious objector is not to protect his or her integrity, but rather lies with the moral quality of what is demanded of them. I propose an alternative view of integrity, which brings it in line with Polanyi’s theory of symbols, and use

that theory to explain the common reduction of conscience to the protection of integrity.

## 15.2. MILITARY CONSCRIPTION IN THE NETHERLANDS; THE LAST TEN YEARS

Military conscription was introduced in the Netherlands by the French, in 1811, and was not abolished when the French left in 1813. There undoubtedly were conscientious objectors, but there were no provisions especially for them. Those with money could (if they felt they could conscientiously do so) make use of the replacement system that allowed individuals to have someone else fulfil their military obligations. This system was abolished in 1898, when a system of *personal* military conscription was introduced. This was an important step in the development of the phenomenon of conscientious objection to military service. Other influential factors were the rise of socialism and anti-militarism.<sup>2</sup> The first law providing for conscientious objectors came in existence in 1923. It did not speak of conscientious objectors, but of ‘*principiële dienstweigeraars*’, that is: draft resisters, who resist on principle. The conscientious objections had to apply to ‘killing a fellow human being’ in general. In the *Wet Gewetensbezwaren Militaire Dienst* (WGMD) [Law on Conscientious Objection to Military Service] of 1964, this formulation was abandoned and replaced by ‘participation in any war violence’. A final specification (and thereby broadening of the provision for objectors) was made in 1979. The WGMD then stated that to be eligible for conscientious objector status, one had to have “insurmountable conscientious objections to the personal fulfilment of military service, relating to the use of means of violence in which one can become involved through service in the Dutch military”.<sup>3</sup> So one did not have to oppose war in general to be able to apply successfully for the status of conscientious objector.

These changes in the law were made, in part at least, under pressure of certain groups in society, and certain (groups of) conscientious objectors. Numbers of C.O.’s also rose, though not dramatically until about 1990. In 1965, 0.25% of 97,101 conscripts applied for C.O. status. In 1970, this number had risen to 0.9% of 114,791 conscripts.<sup>4</sup> “In 1989,” Van de Vijver reports, “2,900 persons were granted CO status out of a conscript class of 45,000 which in turn was drawn from some 120,000 young men liable for the

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<sup>2</sup> Van den Boom (1971), 62-63; Van de Vijver (1993), 220-221.

<sup>3</sup> WGMD 1979, art. 2.; cf. Van de Vijver (1993), 222, for a slightly different translation. Article 99 of the Dutch Constitution states that “the law regulates exemption from military service due to serious conscientious objections”.

<sup>4</sup> Droesen (1972), 8.



draft.”<sup>5</sup> A strong rise in the number of applicants occurred from the late 1980’s on. This was related to the end of the Cold War, and to increasing debate about the need for compulsory military service, which was itself related to the end of the Cold War and the ‘red danger’. The rise in the number of applicants did not entail a (significant) rise in the number of true conscientious objectors. Many applicants applied for conscientious objector status with the express purpose of *not* being recognized; instead, they hoped to find other reasons for *total* exemption while they were in the procedure, or to drag the procedures on until compulsory service was abolished, in which case they hoped to be dismissed as well. These applicants were often assisted by specialized bureaus (lawyer collectives), which promised to keep people out of military service against a fee of 3,000 guilders (1,365 Euro). A common name for these applicants was *weigeryuppen*, meaning: ‘refusal yuppies’, because an important number of them were ‘young urban professionals’, at the beginning of their career, unwilling to endanger this career by spending a year in military service.

I will not be concerned with the history of Dutch military conscription and conscientious objection to it as a whole, but focus on the last 10 years (roughly), until its suspension (*not* abolition) in 1997. One reason for this is that the phenomenon of the ‘weigeryuppen’ exposes problems inherent in institutionalization of conscientious objection. Another is more practical in nature: the only conscientious objector files left in the Defence Archives are from this period (1986 and later).

### 15.2.1. The ‘filter’ of the law

Applications for C.O. status were evaluated by an advisory committee, the *Commissie van Advies Genetensbezwaren Militaire Dienst* (CvA GMD) [Advisory Committee Conscientious Objections Military Service]. On the basis of their own impression of applicants and aided by psychiatrists’ reports, they advised the Minister of Defence either to recognize or not to recognize the objections, and, in the latter case, supported their advice by referring to that legal criterion or those criteria that remained unfulfilled.<sup>6</sup> It was the committee’s task to judge, not only whether the applicants’ objections were conscientious, but also whether they were so *in the sense that the law required*.

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<sup>5</sup> Van de Vijver (1993), 223. See also Figure 1-1 in Moskos and Chambers (1993), 4, reprinted from Karl W. Haltiner, *Milizarmee – Bürgerleitbild oder angeschlagenes Ideal?*, Frauenfeld (Switzerland), 1985, 14; this figure shows how the absolute number of conscientious objectors increased exponentially from the mid-sixties to 1980, to some 3,500. It then dropped again to swerve around 3,000 until the late eighties.

<sup>6</sup> Van de Vijver (1993), 223 notes that the appointed psychiatrist questioned not only the applicant but also “his family, neighbors, and others to determine the sincerity of his beliefs and the consistency of his behavior”. Such questioning of the applicant’s relations may have occurred in earlier years, but did certainly not occur in the last ten years of the draft.

The objections had to be conscientious; they had to be insurmountable [‘onoverkomelijk’]; they had to relate to the use of means of violence of the kind in which one could become involved through service in the Dutch military. This was the filter that the law provided, a filter that was intended to sift out all non-conscientious objections, all ‘surmountable’ conscientious objections, and all insurmountable conscientious objections that did not relate to the use of means of violence as referred to in the law. A negative advice (in the period under discussion, at least) had the following standard format, reflecting the legal filter:

“After study of the file and taking into account that which applicant stated during the session, may the member of the committee advise you not to decide for recognition of the objections to the fulfilment of military service as grave conscientious objections, because it has not (yet) or not (yet) sufficiently been shown that applicant’s objections:

1. are to be labelled as conscientious objections;
2. are to be labelled as insurmountable objections;
3. are related to the use of means of violence as intended in the law.”<sup>7</sup>

The applicable criterion/criteria was/were simply marked with a cross or with a circle around the number. Let us look at the criteria one by one.

#### *15.2.1.1. Conscientious and non-conscientious objections*

Disregarding the problem of authenticity for the moment, we may ask whether the committee was able to distinguish conscientious from non-

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<sup>7</sup> ADD (Archief Directie Dienstplichtzaken); such a letter can be found in virtually any ‘Not Recognized’ file, as I have labelled them for myself. Files often included (and older files always did) a psychiatrist’s report; all files included a written elucidation of the objections, provided by the applicant. Reisner (1967/1968), 701 (footnote 88), reproduces a memorandum “sent by the Director of the Selective Service of the City of New York to all appeal boards in that area”, in which it is said that “an Appeal board when it reaches a conclusion to deny a claim should be able to point to one or more of the following critical elements as the basis in fact: a) Registrant does not sincerely hold the beliefs he sets forth. (...) b) The registrant is not opposed to war in all forms (...). (...) c) The registrant is not opposed to war based upon his religious training and belief (as defined by U.S. v. Seeger) but is motivated *purely* out of political, sociological, racial or economic considerations; or *disavowing* religious training and belief he bases his objection to war on a purely personal moral code, or philosophical view.” I mention this because it shows a structurally similar ‘filter’ to that of the Dutch WGMD, though somewhat different in content due to the different American context. At any rate, the example shows that the formal filter that was to sift out ineligible objections was not peculiar to the Dutch situation.

conscientious objections. This was a hard task, Van den Boom observes, because precise conceptual clarity was lacking.<sup>8</sup> (Note that when Van den Boom wrote this the author of the present book was still to be born, and therefore had not been able to look into the matter yet.)

We have seen in the previous chapter that all core elements of the symbol of conscience can be found in the C.O. files I studied, though not all files of (apparently) authentic conscientious objectors explicitly contain all three elements. They *do* all express the element of ultimate concern in one way or another. I will not elaborate on this anymore – that would be a repetition of what I did in the previous chapter. What matters here is that (in the sample of files I studied) I have not seen what appeared to be true expressions of conscience in what I for practical purposes have called ‘Not Recognized’ (NR) files.<sup>9</sup> Nor have I seen the opposite: expressions that cannot properly be considered expressions of conscience were not, in the sample I have studied, mistaken for expressions of conscience by the committee. That means that *on the level of the expressions applicants used* the committee managed to separate the wheat from the chaff.<sup>10</sup> Arguments like ‘the army destroys the environment’ and ‘military service is undemocratic’ were not accepted, and rightly so (given the legal requirements), because they do not express conscientious objections. In my terms, they lack the element of intimacy; they lack an intimate connection to the person of the objector, and in these cases this sheds doubt on the ultimacy of the expressed concern as well. The committee did not accept ‘I have a good job’, and I would agree, because it does not express *ultimate* concern. And so there are many more examples.<sup>11</sup>

#### 15.2.1.2. *Insurmountability*

To demand that objections are not only grounded in conscience, but also insurmountable, may look a bit odd. Many authors have *defined* conscience in terms suggestive of such insurmountability, for instance by linking conscience closely to personal or moral identity and integrity. The phrase ‘insurmountable conscientious objections’, therefore, deserves further consideration.

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<sup>8</sup> Van den Boom (1971), 69.

<sup>9</sup> Such cases did occur, however; I give an example in 15.2.1.3. But the non-recognition was not the result of a failure to recognize conscientiousness; it resulted from the committee’s judgement that the objections did not relate to the use of means of violence as intended in the law.

<sup>10</sup> I will return to the problem of (in)authenticity in a later section.

<sup>11</sup> I am not saying that the adduced examples can under *no* circumstances be true expressions of an experience of conscience; what I am saying is that in practice, they (generally) are not, and they would have to be supported by a very good story to be able to function as expressions of conscience.

At first sight, such a phrase may seem to lead us into the psychological terrain of what we might call ‘conscience management’. Everybody knows (and some people have studied the phenomenon) that most people are able to ‘deal’ with their conscience in all kinds of ways: circumventing it, soothing it, manipulating it, deceiving it.<sup>12</sup> That people are able to do so is not surprising, if we look beyond the (virtually unavoidable) reifying language employed in the previous sentence and call to mind that conscience can be understood as a mode of consciousness, not as a solid presence in the mind, let alone our bodily make-up. Viewed from this perspective, we are drawn to the conclusion that there may even be no such thing as insurmountable conscientious objections. In the end, people will virtually always find a way of living with the knowledge of having neglected a conscientious objection of their own.

This is not how we should interpret ‘(in)surmountability’, then, and this cannot have been the intended meaning of the term in the WGMD. Insurmountability must be seen as a *qualitative* criterion, rather than as denoting the extreme of a quantitative scale from easy surmountability to complete insurmountability. It is intended to set apart a class of objections that is qualitatively different from all other objections; whereas the latter are ‘surmountable’, the former are not. This is not to say that there is no grey area between them; the point is simply that we are not dealing with a scale of *psychological* surmountability to *psychological* insurmountability – for on a psychological scale of this kind objections would possibly be quite evenly spread from one end of the scale to the other – but rather with a qualitative difference between two kinds of objections, with some cases in between for which it is hard to decide to which category it belongs.

For this qualitative difference I would prefer to speak of objections that express ultimate concern, and objections that do not. There is a practical reason for this. For what is the objector to do in case his or her objections are judged to be nonconscientious, yet insurmountable? Should (s)he surmount them anyway? That is impossible on a non-psychological interpretation of (in)surmountability. I assume that objections may be said to be insurmountable when, as in Thomas More’s case, no reasons can be found that will make the objector change his or her mind about the course of action (s)he is to take, despite the fact that (s)he is open to such reasons. That is the case when the element of ultimate concern is present in the experience of the objector. Its most poignant expression is the moral ‘cannot’ discussed in chapter 13, but there are other expressions, and the experience need not be moral. The WGMD does not provide for nonconscientious, yet insurmountable objections. On my view, any objection that expresses ultimate concern would be eligible for recognition. These will generally be conscientious objections, but their importance lies in the fact

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<sup>12</sup> See, for instance, Micelli and Castelfranchi (1998), and Ramsay (2000), 12-13.

that experiences of conscience are also experiences of ultimate concern, and that conscientious objections therefore express ultimate concern.

The WGMD also does not grant exemption to conscientious objectors whose objections, though judged to be conscientious *and* insurmountable, do not relate to the use of means of violence as referred to in the law. Again, it is clear that ‘insurmountability’ must be a non-psychological criterion, for else the law would demand people to accomplish the impossible. What it does in fact mean is that a moral imperative of the kind ‘here I stand, I can do no other’ is simply overruled because the objections are held to be misdirected. The law only recognizes those conscientious objections that are directed against military service *qua* military service. I will comment on this in the next subsection.

There is also a theoretical reason for preferring to speak of ultimate concern rather than insurmountability. The former is conceptually connected to conscience, whereas the latter is not. The law deliberately distinguishes between the conscientiousness of objections and their insurmountability. This may be because not every experience of conscience is extremely serious, or it may be because of the possibility that reasons are found that make the objector change his or her mind. In the latter case, there are no conscientious objections anymore, so there is still no need to distinguish between the conscientiousness of objections and their insurmountability. With respect to ‘minor’ experiences of conscience, I would say that it is highly unlikely that conscientious objections will be grounded in ‘everyday guilt’. *The* final criterion ought to be whether the objections truly *express* ultimate concern. In that case, the objector has a strong experience of conscience that demands expression – but ‘strong’ is not really the right word; it is not the strength of an impression that is at issue, but a qualitative difference between experiences. The experience of conscience that underlies conscientious objections is not simply a stronger experience than a nagging feeling at the back of one’s mind; it is not even, strictly speaking, an isolated experience at all, but it is the whole of one’s experience. Conscience in this full sense is a mode of consciousness one enters into as a whole; everything is experienced in its light, so that we can then speak of experiences of conscience.<sup>13</sup> This situation is clearly different from that in which minor scruples trouble the mind somewhat. These still point beyond themselves, however, to ultimate

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<sup>13</sup> To some extent, then, the difference resembles that between Buber’s primary words, *I-Thou* and *I-It*, the former of which “can only be spoken with the whole being”, whereas the latter “can never be spoken with the whole being”. Buber uses the term ‘experience’ in a somewhat depreciatory way; I do not. Nevertheless, for those who are familiar with the work, his contrast between ‘experience’ and the ‘meeting’ that comes about in the *I-Thou* relation (which is a true relation) may help understand the difference between conscience as a mode of consciousness one enters as a whole person and isolated experiences of ‘conscience’ that only hint at that. See Buber (2004).

concern. Though the object of the scruples is not itself a matter of ultimate concern, it is in a sense symbolic for it, as it is still an instance of right and wrong. The experience is an experience of conscience, even if it is a weak one. It is not singled out as an experience of conscience by Luhmann's question: "Can I do this and still be me?", because this question awaits a 'yes' or 'no' – the kind of answer that can only seldom be given without qualification. So identity plays a role in conscientious objections. Where ultimate concern demands expression, someone's identity is at stake in a way that it is not in cases of 'everyday guilt'. This is because conscience, in the full sense of the word, entails the involvement of the whole person. In other words: there is a difference between merely having an isolated experience of conscience, and invoking the symbol of conscience. The former is an experience that points towards the possibility of fully entering the mode of consciousness we call conscience; it presents itself as a door opening to that mode of consciousness – but it is such a small door that we cannot enter through it. The C.O., on the other hand, enters into conscience and invokes the symbol of conscience. The best way of expressing the link between conscience on the one hand and identity and integrity on the other is via the symbol of conscience: the symbol integrates not merely what Polanyi called the subsidiaries, but through the subsidiaries it integrates the *person*. Someone who invokes the symbol of conscience integrates himself in the symbol at that moment; hence, this person's identity and integrity are indeed at stake – he *puts* them at stake. Of course, this is only the case when someone truly invokes the symbol, surrendering himself to it – not when someone invokes it opportunistically, relying on its power to sway people.

Instead of using two criteria, then, namely conscientiousness and insurmountability, we can make do with one: *do the objections express the experiences of someone who fully entered the mode of consciousness we call conscience?* If so, they express ultimate concern, and this is what we need to know. This does not mean that I silently introduce the criterion of the strength of the experience of conscience as a criterion besides conscientiousness itself. I mean to point out a qualitative difference between ordinary experiences of conscience (the nagging feeling when you promised to call someone but keep postponing it) and those experiences of conscience that underlie true conscientious objections. In the latter case, there is not a nagging feeling in some corner of the brain, to put it metaphorically, but instead the whole person is intimately involved in the experience; the mode of consciousness we call conscience has been fully entered, and everything is perceived in its light. This is what we should be looking for in conscientious objections, rather than that they are both conscientious *and* insurmountable.

### *15.2.1.3. Conscientious objections as intended in the law*

Not all (insurmountable) conscientious objections could pass through the filter of the law. There was a substantial criterion, stating what the objections

had to relate to, what they had to be *about*. First, we see that the context is defined: the law relates to conscientious objections to military service. A second specification is that the objections have to relate to the *personal* fulfilment of military service, the idea being (obvious pragmatic considerations aside) that no one's conscience can speak for another person.<sup>14</sup> The third, most substantial criterion is that the objections have to relate to the *use of means of violence* (et cetera). This clause is probably intended to make sure that the objections are objections to something intrinsic and essential to service in the military.

There are many possible conscientious objections to military service. One of them (granted, one that comes to mind without significant brainstorming) is the objection against the use of means of violence. But there are others, such as the objection against the suspension of personal autonomy in the military; as a soldier, one is required to obey instantly, without questioning the reasonableness or any other aspect of the command. It can be argued that to adopt such an attitude, even more: to acquire such a disposition, would be morally corrosive, and go against what one personally (and society as a whole generally) considers to be an important value. There are also more private conscientious objections against the personal fulfilment of military service that do not relate to the use of means of violence. For instance, one of the files I studied was from a Frisian C.O., who argued that to uphold his Frisian identity was so important to him (not in the least as a responsibility towards his parents, and as something he owed them), that he could not in good conscience take part in something that would entail his speaking Dutch instead of Frisian.<sup>15</sup> In an address to all members of the advisory committee, the last chairman, Arend Soeteman, referred to the case of a man who had spent his youth in numerous children's homes, and had had many negative experiences with this. By the time he was called up for

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<sup>14</sup> Of course, my conscience may tell me that if I do not intervene in another's fulfilment of his military service, I will be guilty of letting a great evil occur under my eyes. That way, my conscience relates to other person's behaviour: via my non-intervention and required intervention. It stands to reason, however, that there can be no law allowing people to intervene with other people's behaviour whenever his conscience suggests that this is the required course of action.

<sup>15</sup> One of the two most northern provinces of the Netherlands, Friesland, retains its own language (though Dutch is generally spoken there, especially in the larger towns and cities). 'Fries' (Frisian) is the only other recognized language in the Netherlands, besides Dutch. Yet the official language, which is used in all communication between the government at various levels, and which is spoken in the army, is Dutch. In defiance of this, the C.O. in question wrote his first letter to the Minister of Defence in Frisian. He was subsequently summoned to write in Dutch; otherwise, his application would not be considered. From then on, all his letters came both in Dutch and in Frisian; the Dutch version, he explained, was a friend's translation of his own Frisian letter.

military service, he was a father himself, and felt that it was his conscientious duty to personally take care of his children, Soeteman reports. Soeteman remembers that the committee judged that this was indeed a conscientious objection, but not one of the kind eligible for recognition, as it did not relate to the use of means of violence.<sup>16</sup>

Given the dominance of functionalistic and formalistic concepts of conscience in the second half of the twentieth century, especially in the sphere of legal theory, and given the influence of increasing formalism on the development of conscientious objection in the twentieth century, it is odd that the law contains such a substantial criterion. In my view, there is no justifiable ground for the rejection of truly conscientious objections against the personal fulfilment of military service that do not relate to the use of means of violence (*et cetera*). The use of means of violence may be a salient feature of the military, but it does by no means sum up the whole of military service; nor does it exhaust the set of objectionable features of military service. With respect to the case of the conscientious father it can hardly be said that the time he would have to spend away from his children in military barracks was merely contingently related to military service. There is no such service without it.

The criterion that the objections had to relate to the use of means of violence may have sprouted from fear of a situation in which ‘anything goes’, but this would have been irrational. Objections would still have needed to be conscientious (and, naturally, related to the personal fulfilment of military service). The use of the criterion under discussion in no way makes it easier to distinguish between real and faked conscientious objections, so in the end it seems to constitute a rather arbitrary limitation of the number of recognized objections. Moreover, there is a danger that references to this criterion by applicants acquire the function of a ‘shibboleth’, a kind of password; the question of authenticity then recedes into the background – I will look into this problem later. Or, the other way around: given that applicants know what the criteria are, if an applicant does not refer to the use of means of violence, but expresses other conscientious objections, (and assuming that the applicant in question is not stupid), this seems to suggest honesty – and hence the authenticity of the conscientious objection. For this reason, too, it would be (or would have been) preferable to allow other conscientious objections than merely those relating to the use of means of violence.

### **15.2.2. Problems of institutionalization**

We have seen in the previous chapter that the institutionalization of conscientious objection, entailing the introduction of legal provisions and procedures designed to deal with applications efficiently, can be seen as a

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<sup>16</sup> Soeteman (1997).



result – and as a legitimation – of increasing state power. From a more practical viewpoint it is also the result of societal pressure – that is, of the appearance, in the first quarter of the twentieth century, of pamphlets urging people to refuse military service, of manifestos, and of petitions to parliament.<sup>17</sup> It turned out that there were a fairly constant number of people who conscientiously objected to military service. In the seventies, however, the number did increase enough to create a reservoir of cases to be dealt with, which took an increasing amount of time per case.<sup>18</sup> As a result, many cases were dealt with without a meeting between the advisory committee and the applicant. This was done when the committee judged that the application would very probably result in an advice for recognition; no negative advices were produced in this way. The 1979 revision of the law enabled the ‘single chamber’ sessions, in which only one member of the committee would speak with the applicant. Thus, the procedure was sped up. This brings us to the normal situation in the last ten years of the draft: the applicant would speak to one member of the committee; if this did not result in a positive advice, the applicant would be seen a second time, but now by three representatives of the committee. In case of a negative advice, appeal to the Raad van State (the highest advisory organ of the Dutch state, and the oldest state organ, instituted in 1531) was possible. After that, if the application was still rejected, the procedure could be started all over again, *if* the applicant was able to come up with new and significant support for his case. Such was the procedure in outline; some problematic features of (more detailed aspects of) the procedure will be considered below.<sup>19</sup>

#### *15.2.2.1. Persons and numbers*

Inevitably, the procedural character of the way applications (the term itself is significant) were dealt with led people to feel they were treated, not as persons, but as numbers. This was especially frustrating for those for whom part of the objectionableness of military service lay in the de-personalization that it (to their mind) involved. One C.O. file from the ADD provides a very eloquent illustration of the problem. It concerned a man who was called up for revision exercise. The summary report of the meeting with the advisory committee notes his statement that during his military service he was treated, not as a human being, but as a number. The report of a later session consists of 35 paragraphs, 28 of which start: “Applicant [says/answers/is asked]...” Many of them are single sentence paragraphs; paragraphs with more than one sentence often contain several sentences starting the same way. After a

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<sup>17</sup> Droesen (1972), 6-7; Van de Vijver (1993), 220-221.

<sup>18</sup> Soeteman (1997). Van de Vijver (1993), 223, writes that in the early seventies, numbers ‘soared to 2,000 or 3,000 a year’.

<sup>19</sup> An example of awareness of problems related to the proceduralization of conscientious objection in the United States is Reisner (1967/1968).

long row of paragraphs starting in this manner (Applicant is asked, Applicant says, Applicant has, Applicant is asked, Applicant says ... Applicant answers, Applicant says) we reach a paragraph ending with the now almost comical phrase “applicant wishes to remain human”.<sup>20</sup>

Thus, paradoxically, what was at least partly intended as a way of showing respect for persons, of making room for individuality, evolved into a procedure that dealt with numbers.

Persons and numbers are relevant in another way: the same persons have evaluated the applications of C.O.’s for many years. Both members of the committee and psychiatrists reporting on the personality of applicants did their work for a very long time (sometimes twenty years or more). So the same persons evaluated the objections of large numbers of people. The objections were often the same, and so, superficially, were the people. The majority had received higher education. If lesser-educated people applied for C.O. status, they often worked in nursing or something similar. Hearing ‘similar’ convictions expressed by ‘similar’ people time and again, it must have become harder for psychiatrists and members of the advisory committee to focus on the real meaning those convictions had to the people expressing them. Now and then, reports (both by psychiatrists and the committee) betray a sense of irony. In one case, I found evidence of undesirable involvement on the part of the psychiatrist. In the letter accompanying his report, he writes: “Maybe we [the psychiatrist and the member of the committee to which the letter was addressed] should not let this man go on via the multiple chamber after all...”<sup>21</sup> The psychiatrist, whose only job it was to report on the personality of the applicant, acts as if he were a party in this, and as if the decision as to the nature of the advice given to the minister was a matter between him and the committee. In fact, it was (or ought to have been) no concern of his. Furthermore, the advice the psychiatrist gave is an example of ‘bargaining’; that is, he does not consider the (non-)recognition of objections to be a matter of attaching the proper advice to each application, but feels it is a matter of negotiation, of balancing the pros and cons of recognition and non-recognition. This is a perversion of the procedure, at least partly engendered by the extensive period in which the same persons were asked to evaluate applications and applicants.

#### *15.2.2.2. The problem of authenticity*

The problem of establishing the authenticity of statements may arise whenever someone reports on his inner life, especially when the person in question may benefit from saying certain things rather than others. Hence, while it is not unique to the context of conscientious objection, it is also a

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<sup>20</sup> It is possible that irony was intended in this case.

<sup>21</sup> ADD; the letter is from 1991. The psychiatrist suggested instead that the man be declared unfit for service for psychiatric reasons (i.e. severe adaptability problems).

problem there. How do we know that a self-proclaimed C.O. is *really* a C.O? How do we know he is not someone who in fact does not mind killing people so much, and does not really have any scruples with respect to military service, but instead uses the legal provisions for conscientious objectors to avoid something he just would not like to do? After all, we cannot look into his mind, can we?

First of all, the distinction between 'inner life' and 'outer life' is artificial. What someone feels and thinks and desires does not remain locked in his mind, but shows itself in actions, in behaviour, in what someone does and does not do. In fact, part of the feeling, thinking and desiring in a sense *consists* in bodily action – they are not ephemeral processes going on independently in their own mysterious sphere. Hence, we are allowed to expect a certain degree of consistency between what someone says to feel and think on the one hand, and what this person does and has done, and how (s)he behaves in everyday life on the other. A hooligan that has been arrested for violent assault on several occasions will have a hard time convincing the advisory committee that he is in essence a non-violent person, who conscientiously objects to military service because of the violence in which he, as a conscript, might be required to participate. Hence, a Luhmannian test of integrity is in order.

This takes us only so far, however. Many people's lives show no signs of (abnormal) violence, but that does not mean those people are all pacifists. Most of them will *not* conscientiously object to military service. Of those who do, we still do not know for sure whether their objections are authentic. The test of integrity based on the criterion of someone's biography can only rule some people *out* with reasonable certainty; it cannot do the opposite. But how big is this problem?

In the case of conscientious objection to military service, it was bigger than it needed to be. Due to thoroughgoing proceduralization, the chance of inauthentic objections being recognized as true conscientious objections did inevitably increase. The filter of the law led members of the committee to focus especially on expressions regarding the use of means of violence (et cetera). Many negative advices were based on lack of reference to the use of means of violence. This meant, however, that someone feigning to have conscientious objections, who did specifically refer to the use of means of violence, focusing his objections on this aspect of military service, had a greater chance of 'passing the test' than someone with truly conscientious objections who did not specifically refer to the use of means of violence. Almost inevitably, where the authenticity of objections is extremely hard to establish, the criterion becomes: did he mention the use of means of violence?

But the problem must not be exaggerated. 'Weigeryuppen' were usually identified as such. Also, the committee often saw the difference between relatively disinterested or interested but nonconscientious reasoning

and concern springing from conscience. I do believe, however, that the problem of authenticity would have been smallest, had there been only one criterion: given that the objection relates to the personal fulfilment of military service, is the objection truly conscientious? This must be judged in terms of the elements of the symbol of conscience found in the expressions used by the objector. Many non-verbal signs must corroborate the impression that someone truly invokes the symbol of conscience; otherwise, it is likely that no ultimate concern is expressed, and that the element of intimacy is lacking. These elements are analytically distinguishable, but in practice usually inseparable. The element of intimacy pertains to the way a person is related to the reasons he puts forward and the convictions he expresses; they must be expressions *of* his person, not merely expressions used *by* him. The problem of (in)authenticity is minimized by penetrating as closely as possible to the experience(s) that move the objector. This cannot be done through procedures.

### 15.2.3. The intentionality of conscience<sup>22</sup>

The law (WGMD) states that conscientious objections should relate to ‘the use of means of violence in which one can become involved through service in the Dutch military’. This seems to entail that the conscience of the objector should be concerned with (and about) the moral quality of this use of means of violence. Thus, the intentionality of conscience comes into view. It would seem logical, then, that this aspect of conscience would figure in evaluations of the conscientiousness of objections. However, this was not so. It has proven to be quite easy, both in theory and in practice, to forget the intentionality of conscience. The functionalist concepts of conscience of Luhmann and others have greatly contributed to this forgetfulness. The focus of these concepts is on the function of conscience, the way it operates, and why it operates the way it does.<sup>23</sup> The content of conscience, or what it is about, is irrelevant. What also contributed to the forgetfulness of the intentionality of conscience was a one-sided focus on integrity. Conscientious objections are often held to be indications that the objector is trying to protect his or her integrity.<sup>24</sup> The importance of conscientious objection is then said to lie in the value of integrity – not in what is of

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<sup>22</sup> Recall that this is not the Voegelinian ‘intentionality’, but my broader notion; see 8.5.

<sup>23</sup> The ‘why’-question *could* also, and I would say better, be answered in a way that involves reference to the intentionality of conscience, but this is not the kind of explanation functionalists are looking for.

<sup>24</sup> See especially Childress (1979), 327, and Wicclair (2000), 213-214; the emphasis on integrity is also strong in Luhmann’s work on conscience, and particularly in that of Hannah Arendt; see, for instance, Arendt (1971).

primary importance to the objectors themselves, namely what their conscience is about.<sup>25</sup>

Vermeulen has pointed out (as we have seen in earlier chapters) the influence of functionalist concepts on Dutch legislation. The concept of conscience that underlies earlier versions of the WGMD is more substantial, the further one goes back in time; the last version (of 1978) is based on a formalistic (functionalist) concept of conscience.<sup>26</sup> The government, Vermeulen writes, holds the view that a conscientious objection is characterized by two essential features: its gravity (seriousness), and its universality. ‘Universality’, in this context, means that the objector cannot, for instance, object to *specific* wars, but must oppose all wars; she cannot object to *particular* types of insurance, to take another example, but must reject all kinds of insurance. In practice, in 1978, the criterion of universality had already eroded to the point of being virtually non-existent. Hence, Vermeulen notes, ‘gravity’ remained as the only criterion by which to judge the conscientiousness of an objection.<sup>27</sup> This found clear expression in parliament; Vermeulen paraphrases as follows: “Such a ‘deeply’ grounded conviction must be at stake, that to act contrary to the norms this involves leads to a crisis of conscience [gewetensnood].”<sup>28</sup> To act contrary to a conscientious objection would lead to ‘a conflict of conscience that cannot be coped with’.<sup>29</sup>

Earlier in this chapter I interpreted the term ‘insurmountability’, used in the WGMD, sympathetically; that is, though on first sight it aroused the suspicion that it might be a psychological criterion, I chose to interpret it otherwise, because the psychological interpretation would lead to the absurd consequence that certain people would be required to surmount objections they could not, psychologically, surmount. Associations with psychological difficulties and possible mental damage are still easily aroused by the term ‘insurmountability’, however – which is another reason for preferring to speak of ultimate concern – and this may be one reason why Vermeulen speaks in terms of ‘coping with’ conflicts of conscience. Another reason may be that by speaking in such terms he reflects the psychological focus of functionalist concepts of conscience. At any rate, this kind of language diverts attention away from the intentionality of conscience.

Here is another example of the psychologization of conscience and conscientious objection. Van den Boom, in his article on conscientious objection to military service, notes that the 1962 formulation of the WGMD was intended to exclude ‘objections on political grounds, emotional

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<sup>25</sup> See 15.3.4 for more on this point.

<sup>26</sup> Vermeulen (1989), 91.

<sup>27</sup> *Ibid.*, 92.

<sup>28</sup> *Idem.*

<sup>29</sup> *Idem.*

considerations, intellectual considerations and considerations from expediency'. He goes on to say that in the discussion of the bill it was said that these objections could 'condense' to conscientious objections. Van den Boom elucidates as follows: "This means, that these objections move the interior of the man in such a way, that, were he forced to fulfil his military obligations, he would experience severe mental damage."<sup>30</sup> About the difficult work of the advisory committee, Van den Boom says that it is greatly facilitated by the reports made by psychiatrists, regarding the formation or development of a person's conscience, dealing especially with those aspects 'that might be the cause of the stirring of conscience'.<sup>31</sup> The implication is that one can explain why someone's conscience bothers him by elements from this person's past. Useful as this may be, I would hold that the intentionality of conscience should feature in any such 'explanation'.

In my concept of conscience, the intentionality is expressed in the terms 'awareness of'; conscience is a concerned awareness *of* something, it is *about* something. There is an objectivist element in my formulation, but this should not be overestimated. I do not imply that conscience is simply an awareness of something that 'exists' independently of the subject; in a sense, I hold the opposite: the subject is concerned, interested, and the object of experience is an object *for* that subject. The object is only *analytically* separable from the subject – in practice they constitute each other, and are interwoven with each other.<sup>32</sup> This is especially true in the case of conscience, in which neither the object nor the subject dominates the experience, but rather the relation between the two. Conscience is a concerned awareness of the *moral quality* of *my own contribution* to the process of reality. It should not be reduced to a concern for (the integrity of) the self.

Had the law (WGMD) and its interpretations been informed by my concept of conscience, the intentionality of conscience would not have been

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<sup>30</sup> Van den Boom (1971), 69.

<sup>31</sup> *Ibid.*, 70. The fact that psychiatrists were asked to report on conscientious objectors is itself a telling sign of the psychologization of conscience. It is also suspicious in the sense that it might suggest that there is something 'wrong' with conscientious objectors; cf. the formulation used in the United States in World War II when someone was classified 4-F: "not acceptable for military duty for physical, mental, or moral reasons" – moral reasons are mentioned in one breath with physical and mental unfitness. See Heisler (1952/1953), 442. In First-World-War Germany, psychiatrists were involved in the evaluation of conscientious objections, due to the general opinion that there had to be something wrong with someone who did not wish to fight for Kaiser and country (Brock [2006a]). It would be interesting to find out whether the involvement of psychiatrists in such evaluation procedures today (or, as in the Dutch case, in the recent past) has a similar historical background.

<sup>32</sup> See the second part of the general introduction on the Whiteheadian elements underlying my view of conscience.

so easily forgotten. Not only does this mean that conscience would have been more fairly represented and better understood; it also means that people would not have lost sight of what is most important in conscientious objection: that it expresses ultimate concern. There is a tendency in the literature on conscientious objection, as well as in the institutionalized practice of conscientious objection to military service (as evidenced by the role of psychiatrists) to mislocate the source of the importance of conscientious objections. Their importance is then thought to lie either in the potential damage resulting from non-recognition of the objections, or in the value of (moral) integrity. In both cases, the importance is judged by the likelihood of severe mental damage. All this is a misconception, however. Severe mental damage may be the result when nonconscientious objections are laid aside by the state (or the authoritative party concerned). Objections may be extremely serious, without being conscientious. Moreover, they may reach into the core of a person (assuming there is such a thing), without being conscientious. To bring in (the strength of) the relation between feelings or convictions and a person's identity is not enough. What if someone 'cannot' fulfil his military obligations because he loves his wife so much and she loves him so much that they cannot be apart for such a long time (or for so many days every week)? This is serious (to the point of psychological insurmountability); it has everything to do with his identity – his identity is perhaps even defined in terms of his relationship with his wife. Yet, (as long as we do not qualify the example by adding specific elements), it is not a matter of conscience; nor will such a case usually qualify as an example of ultimate concern.<sup>33</sup>

'Identity' is not the keyword, then, nor is 'integrity', or it would have to be in the alternative sense in which I have used it.<sup>34</sup> Integrity (both personal and moral) is then the result of a symbolic integration, in which the individual integrates him- or herself in the symbol of conscience.

The symbol of conscience, we have said, is engendered by a certain class of experiences, which someone has in the particular mode of consciousness for which I have also used the term conscience, and from which I have derived my fluid concept of conscience. The main element of the symbol of conscience is that of ultimate concern, but we can also say that conscience is the mode of consciousness that receives its characteristic quality from this ultimate concern. In this mode of consciousness, everything is experienced in the light of this ultimate concern. This is where the most significant difference lies between conscientious objections and other objections, a difference that is *qualitative* in nature: conscientious objections stem from an ultimate concern; they are rooted in the kind of experience that

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<sup>33</sup> Which is not to say that love is not a possible manifestation of nonconscientious ultimate concern, of course.

<sup>34</sup> I will elaborate on this notion of integrity in 15.3.4.

has engendered the symbol of conscience.<sup>35</sup> Ultimate concern manifests itself in a concrete concern about a particular matter; hence the intentionality of conscience. For the conscientious objector, it is in this concrete concern about the moral quality of (usually) a particular course of action demanded of him or her that the importance of his or her objections lies. I agree that this is the locus of the importance of conscientious objections, though in the sense that I interpret the objector's 'this is wrong' or 'I cannot do this' as expressing an experience of conscience and thereby ultimate concern.

### 15.3 CONSCIENTIOUS OBJECTIONS AND GAY MARRIAGE

The Dutch public debate about gay marriage arose in the 1990's, leading to the introduction of a registered partnership for gay couples in 1998, and finally to the institution of marriage being opened up to gay men and women in 2001. The process started in 1990, when the Court of Justice in Amsterdam referred the case of a gay couple that had requested a civil marriage (which was denied to them in a lower court) to parliament. The road to gay marriage came to lie open in 1994, when the first 'purple' cabinet was installed, a coalition of the (red) social-democrats (PvdA), the liberal-democrats (D'66), and the (blue) liberals (VVD) – a cabinet without Christian input. Certain Christian groups and all Christian political parties had opposed the idea of gay marriage from the beginning of the debate.<sup>36</sup> The difference between the Christian viewpoint and what we might call, for convenience sake, the secular viewpoint, is illustrated quite clearly by the following. Christian political parties argued for the right of civil servants to conscientiously object to gay marriage; that is, for the right of registrars to refuse to perform the ceremony. *Within* the CDA (the largest Christian political party in the Netherlands, and one of the three largest parties overall), when the time came when members of parliament had to vote for or against a law enabling gay marriage, M.P.'s of that party had to convince the chairman of the CDA's parliamentary fraction of their conscientious objections to a 'no', before they were allowed to vote *with* 'purple', *for* the law.<sup>37</sup> So here it was the world (or actually, the Netherlands) upside down.

Christian political parties argued for the civil servants' right to conscientious objection in this matter, because they knew that among their supporters would be civil servants with religiously grounded conscientious

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<sup>35</sup> Once again: there *can* be non-conscientious objections that express an ultimate concern; I would say that they deserve the same treatment. But the relevant thing here is that conscientious objections deserve special respect because they express ultimate concern. More about this will follow in the final chapter.

<sup>36</sup> Other groups (certain Muslims, for instance) also oppose(d) gay marriage, of course, but they were not or less visible in the debate.

<sup>37</sup> "CDA-leider keurt gewetensbezwaren".



objections to gay marriage (and before that, the registered partnership). In the parliamentary discussion about the bills concerning gay marriage, Job Cohen, Minister of State in the department of Justice, conceded that civil servants with conscientious objections to gay marriage would not be required to perform the ceremony. The municipality in question would have to find another registrar to do the job, if necessary (that is, if all of their own registrars conscientiously refused) one from another municipality. So Cohen's view was that a practical solution would have to be found; that the problem, if it arose, would have to be dealt with in a pragmatic way. He did not think it necessary to make legal arrangements for such an occasion. If only he had thought otherwise, we might say in retrospect; it could have prevented a lot of trouble. But on the bright side: I would have had less to write about – in fact, this whole book might not have been written, for it was the case of a civil servant conscientiously objecting to gay marriage that occasioned it.

It is this case, that of Nynke Eringa-Boomgaardt, registrar in Leeuwarden, that this section is about. Hers was the first case of an actual clash between a municipal council and a civil servant on the issue of gay marriage. Three years earlier, in 1998, Igno Osterhaus was in a similar position in Amsterdam, but it never came to a real clash. The Christian Union RMU mediated between him and the city of Amsterdam. The result was a transfer within Amsterdam, and the concession that partnership registration would no longer be part of his task set.<sup>38</sup> In 2000, alderman Geert Dales (VVD), concerned with personnel and organisation, stated that there was no room in Amsterdam for registrars who refuse to marry a gay couple. Such registrars would be fired, and there could be no pragmatic solutions in this matter. He took a 'principled' point of view, then. He issued his statements on the gay day for civil servants in Amsterdam, an invitation for which had been included with the civil servants' paychecks. Some civil servants took offence, and reacted in, let us say, unequivocal terms. They were reprimanded and made to apologize by Dales.<sup>39</sup> But Dales' remarks formed a 'pre-emptive strike'; Eringa-Boomgaardt was the first to run into trouble with her conscientious objections.

The juridical background of the case is formed by a variety of elements: constitutional rights, legal articles, government reports, ministerial statements, jurisprudence, and conclusions formed by the Commissie Gelijke Behandeling (CGB) [Committee Equal Treatment – an important advisory committee]. Relevant constitutional rights and principles are: freedom from 'discrimination on grounds of religion, conviction, political allegiance, race, gender, or any other grounds' (first article of the Dutch Constitution); the right of all Dutch citizens to equal access to public offices (third article); the

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<sup>38</sup> "Gewetensbezwaren tellen niet".

<sup>39</sup> "Ambtenaar moet homo in de echt verbinden".

principle of freedom of conscience (sixth article). The explanation accompanying the Constitution in the version of 2000 states that “[t]he constitutional rights apply in any relation to the government, so that the civil servant and the soldier can appeal to them too”.<sup>40</sup> The Civil Servants Law states that civil servants cannot be compelled to work on days that, on grounds of their religion or philosophy of life, for them count as festival days or resting days (art. 125b). Rouvoet and Koppelaar (both from the Christen Unie, a small Christian political party) pointed this out as an illustration of the traditional Dutch way of dealing with conscientious objections.<sup>41</sup> They also invoked the support of the third article of the Dutch Constitution. Besides that, they drew attention to a statement by Health Minister Borst concerning equal treatment in the case of IVF for lesbian women. She stated that clinics cannot a priori refuse to allow IVF to lesbian women, but added: “This leaves untouched the freedom of choice of the individual care-giver to refuse a treatment on religious grounds (...) and possibly aid in finding alternative possibilities of assistance.”<sup>42</sup> Analogously, Rouvoet and Koppelaar argued that civil servants should be allowed the same freedom of choice. Further, there is Minister of Integration Van Boxtel’s statement that registrars with conscientious objections to gay marriage cannot be fired.<sup>43</sup> Cohen’s concession to Christian parties was already mentioned; but Cohen made another important statement, namely that the case of gay marriage is one of equal treatment in *unequal* cases.<sup>44</sup> This is relevant in connection with the conclusions reached by the CGB, which, in 2002, focused on the issue of religious discrimination rather than that of discrimination on grounds of sexual disposition. The CGB stated that two municipalities that compelled their registrars to contract all kinds of marriage were in the wrong, because they were guilty of indirect discrimination on grounds of people’s religion.<sup>45</sup> An important document is the 1983 interdepartmental government report *De Ambtenaar met Gewetensbezwaren* [The Civil Servant with Conscientious Objections]. This report takes a pragmatic line: if a civil servant’s conscientious objections can be accommodated for by changing the civil servant’s task set or by a transfer, this should be done. A discharge is only possible when no pragmatic solution can be found, or when the civil servant refuses to cooperate in finding one. A 1989 circular of the Defence Minister of State is based on the 1983 report and affirms it, pointing out that the ‘ambtenarenrechter’ [civil servants judge] based his verdicts on the report

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<sup>40</sup> *Grondwet voor het Koninkrijk der Nederlanden 2002*, 35.

<sup>41</sup> Rouvoet and Koppelaar (2001).

<sup>42</sup> *Idem*.

<sup>43</sup> “Na weigeren homohuwelijk geen ontslag”; standpunt Van Boxtel”.

<sup>44</sup> Rouvoet and Koppelaar (2001).

<sup>45</sup> “Ambtenaar mag homohuwelijk weigeren”; “Ambtenaar mag sluiten homohuwelijk weigeren”; “Ambtenaar mag weigeren homohuwelijk te sluiten”.

when such cases as the report deals with arose. (So jurisdiction followed the 1983 report.) Finally, there is the letter (of the 6<sup>th</sup> of November 2000) from the VNG (Vereniging van Nederlandse Gemeenten) [Association of Dutch Municipalities] to all Dutch municipalities. The VNG stated that there could be no municipal regulations enabling civil servants to refuse to marry gay couples; this would be unconstitutional.<sup>46</sup> However, the VNG also advised that a pragmatic solution be found in occurring cases.<sup>47</sup> It is interesting to note that it was VVD alderman A. Brok from Leeuwarden who, in 1998, pointed out the ‘illegality’ of municipal regulations accommodating for civil servants’ conscientious objections to gay marriage to the VNG.<sup>48</sup> *Trouw* even reports that the VNG withdrew a lenient advice at the intercession of Leeuwarden.<sup>49</sup>

Besides all these laws, reports, advices, et cetera that both parties could pick and choose from to support their case, there was the public debate, and there were lobbies. An important representative of the gay (marriage) lobby was the COC.<sup>50</sup> The regional COC department Midden-Gelderland wrote a letter to 23 municipalities in the province of Gelderland, stating that civil servants refusing to marry gay couples should be fired. It was the chairman of COC Leeuwarden, Robert Grossnickel, who started the *Eringa-Boomgaardt* case, by requesting her for his own gay marriage.<sup>51</sup> Christian unions (like the RMU and the GMV) are part of the opposing lobby. The RMU called upon civil servants to appeal to the ‘law on conscientious objection’.<sup>52</sup> The majority of the Dutch people were in favour of the possibility of gay marriage, but of course that does not mean they were also in majority against the civil servant’s right to conscientious objection in this matter. A survey by the NIPO (Nederlands Instituut voor de Publieke Opinie en het Marktonderzoek) [Dutch Institute for Public

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<sup>46</sup> “Homohuwelijk princepszaak in Leeuwarden”; “Geen gewetensbezwaren; ambtenaren moeten meewerken aan homohuwelijk”.

<sup>47</sup> “Ambtenaar Leeuwarden moet homo’s huwen”.

<sup>48</sup> “Homohuwelijk princepszaak in Leeuwarden”.

<sup>49</sup> “Ontslag wegens niet huwen homo’s”.

<sup>50</sup> COC, in full: Federatie van Nederlandse Verenigingen tot Integratie van Homoseksualiteit COC Nederland [Federation of Dutch Associations for the Integration of Homosexuality COC the Netherlands], stands for Cultureel Ontspanning Centrum [Cultural Relaxation Centre], founded in Amsterdam, in 1946.

<sup>51</sup> “Homohuwelijk princepszaak in Leeuwarden”; “Ontslag wegens niet huwen homo’s”. *Trouw* (in the latter article) erroneously writes ‘Grosswinckel’ instead of ‘Grossnickel’.

<sup>52</sup> “Goed voor de zaak; De Overtuiging”. I am not sure which law they mean; it might be the ‘Algemene Wet Gelijke Behandeling’ (General Law on Equal Treatment), which forbids discrimination on grounds of religion or beliefs, race, gender, and so on.

Opinion and Market Research] from September 2000, commissioned by the *Reformatorsch Dagblad* (a Protestant newspaper), showed that 62% of the Dutch population had no objections against gay marriage. For the non-church-going population this number was 72%.<sup>53</sup>

### 15.3.1. The Eringa-Boomgaardt case in outline

The Eringa-Boomgaardt case lasted three years, from 2001 until 2004. Newspapers reported regularly on the latest developments. One moment it seemed that she would be discharged, or, to be more precise: that her contract would not be renewed; another moment Eringa-Boomgaardt seemed to have gained the upper hand. The city of Leeuwarden, bent on discharging her, had made a mistake with her appointment; her contract ended January 1st 2000, but this was only discovered in 2001. She was then hastily re-appointed until September 1st 2001.<sup>54</sup> This raised severe problems for Leeuwarden, because now Eringa-Boomgaardt was in function as a registrar at the time of the coming into force of the changed law enabling gay marriage. Had Leeuwarden realised that her contract ended on the first of January 2000, they could have decided not to reappoint her then, in view of the coming law. In that case, Leeuwarden would have had a much bigger chance of success.<sup>55</sup> Things like this played an important role in the case, which was finally resolved in Eringa-Boomgaardt's favour. I will not go into all the procedural details. Of much more interest is the foundation Eringa-Boomgaardt offered for her conscientious objection. Of equal interest is the religious zeal of those defenders of gay marriage that opposed the possibility of conscientious objection to gay marriage. Those topics will receive the most attention. But first, I will give a rough outline of the case and its development.

On the second of April 2001 (so one day after gay marriage became a legal possibility), Robert Grossnickel and his boyfriend requested to be married by Eringa-Boomgaardt. "The person behind the counter, who knows me from the COC, asked me if I was joking," Grossnickel told the press. He was told that Eringa-Boomgaardt experienced great difficulties in marrying a gay couple, and asked whether he did not want someone else to perform the ceremony. He did, but he also took the case to the Court of Mayor and Aldermen.<sup>56</sup> Eringa-Boomgaardt herself felt that she was deliberately chosen from amidst eight registrars, seven of which had no

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<sup>53</sup> Nipo-enquete *Homohuwelijk*; see also "Homohuwelijk haalt de eindstreep".

<sup>54</sup> "Gewetensbezwaren tellen niet".

<sup>55</sup> However, in 1999 gay marriage was not yet possible. Leeuwarden knew a registered partnership for gay people since 1995 (so before it was introduced nationally), and a pragmatic solution had been found for Eringa-Boomgaardt, so that before the introduction of gay marriage there was no reason for Leeuwarden not to reappoint her.

<sup>56</sup> "Ontslag wegens niet huwen homo's".

problems with gay marriage whatsoever. This seems plausible for a number of reasons. One is that the matter had already been debated in theory for some time, and the COC would have liked clarity in the matter – clarity that could be gained in court.<sup>57</sup> Another reason is that Eringa-Boomgaardt had a gay brother, who was active in the national COC, making it less likely that Grossnickel did not know about Eringa-Boomgaardt's views. Grossnickel himself stated that while he knew appearances were against him, he nevertheless told the truth. "We picked her because her life description appealed to us."<sup>58</sup> Grossnickel acquired the services of G. Spong, one of the best-known Dutch criminal lawyers, to prepare legal charges against Leeuwarden and Eringa-Boomgaardt.

Another gay couple asked for the services of Eringa-Boomgaardt, this time a couple from Amsterdam. One of the men was born and raised in Leeuwarden and knew Eringa-Boomgaardt.<sup>59</sup> He figured, the NRC reports, that while Eringa-Boomgaardt had a homosexual brother who was active in the COC, she might feel sympathetic towards gay people.<sup>60</sup> Eringa-Boomgaardt let them know that she had religiously grounded objections against gay marriage.

A long period of heated discussion within the city council and between the city council and the Court of Mayor and Aldermen followed. Eringa-Boomgaardt was supported by one Christian party in the city council (with one seat), but not by CDA (and therefore Christian) alderman B. Bilker, or the rest of that party. After the elections of 2002, Chairman of the CDA fraction in the council G. Krol took Eringa-Boomgaardt's side, but later, when he had become alderman himself, he switched sides, stating that his being an alderman obliged him to execute all council decrees. For himself, although he had formerly argued for respect for civil servants' conscientious objections, conscience was either not an issue, or his was a 'Hobbesian' conscience, for which his duty as an alderman necessarily took precedence over 'private' moral considerations.<sup>61</sup>

At the end of 2002, Eringa-Boomgaardt had three important sentences and statements on her side: one from the CGB (which I mentioned before), one by the municipal committee of appeals and petitions, and one by the administrative judge. The latter concluded that Eringa-Boomgaardt *was*, contrary to what the city of Leeuwarden held, a civil servant, and not an extraordinary civil servant; this meant that she had a

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<sup>57</sup> Similarly, it was suggested by Justice Minister of State Kalsbeek (PvdA) that with its principled stance Leeuwarden was trying to draw out a test trial.

<sup>58</sup> "Homohuwelijk principezaak in Leeuwarden".

<sup>59</sup> Eringa-Boomgaardt did not remember him, though; they had gone to the same school 17 years earlier.

<sup>60</sup> *Idem*.

<sup>61</sup> *Idem*; "Homohuwelijk blijft twistpunt".

normal contract, and could legitimately appeal against the Court of Mayor and Aldermen's decision not to prolong her contract.

In 2003, after a long legal procedure, Eringa-Boomgaardt's suspension (which had started in 2001) was overruled by the court. In February 2004, the Court of Mayor and Aldermen unanimously decided that Eringa-Boomgaardt could stay on until 2015, without having to marry gay couples. The decision was based on legal advice, according to which they would have a 50% chance only to get rid of the registrar. The costs so far (114.000 Euros), and the court's ruling that the municipality had made a procedural error regarding the earlier prolongation of Eringa-Boomgaardt's contract (she had deliberately been reappointed for a shorter period than the normal five years), will also have played a role in the decision process.<sup>62</sup> With their decision, the Court of Mayor and Aldermen disregarded a motion by the city council, which acquiesced in the decision in the end. The Court of Mayor and Aldermen drew their conclusions after Eringa-Boomgaardt's final decision not to put the case before the court together, which had been the Court of Mayor and Aldermen's intention, with the purpose of drawing out a judgement on principle. In the end Eringa-Boomgaardt chose the safety of her juridical position, to the disappointment of CDA alderman G. Krol, who stated: "If you're fighting for your principles, ask the judge for a clear sentence, too."<sup>63</sup>

### 15.3.2. Eringa-Boomgaardt's story

The papers tell us nothing about Eringa-Boomgaardt's reasons for refusing to marry gay couples; they give us no clue as to the source or the precise nature of her objections, except that they have to do with her religious background. This makes sense, because she never sought, or actually avoided the press, even while one newspaper or radio station after the other called her at home. She agreed to an interview with me, however, in which she was very open about her reasons, feelings, doubts and scruples. The following is a condensation of this interview, which I hope still shows the complexity of the case, and of Eringa-Boomgaardt's experience in particular.

Eringa-Boomgaardt long put off making her mind up on the subject of gay marriage. Before gay partnership registration was introduced, she had no (articulate) opinion on the subject. To have an opinion, she felt, would lead to discord. "The clearer you define your own position, the clearer your enemies are." Vagueness was easier. When gay partnership became possible,

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<sup>62</sup> "Leeuwarden overstag in trouwkwestie".

<sup>63</sup> "Trouwambtenaar mag toch blijven". On this point, Eringa-Boomgaardt said that, had she wanted a judge to issue a statement on principle, she would have had to start a new, this time *civil*, procedure (the case had appeared before a civil-servant judge) – something she did not really feel up to.

she wished to steer clear from it. Meanwhile, when her own gay brother stayed at her house, he slept together with his boyfriend.

The relationship with her brother was severely disturbed when the first gay couple presented itself to Eringa-Boomgaardt, and she was forced to take a position. Her Christian identity came into play here. Until her marriage, she had belonged to the 'Gereformeerde Kerk', which took a more principled stance, she said, than the 'Nederlands Hervormde Kerk' she now belonged to with her husband.<sup>64</sup> Some people there advised her to just make it a two-minute ceremony, so that it would be over very quickly. Her reaction to that pragmatic suggestion was: "*That* is what I call discrimination." If you make a serious effort for heterosexuals, you cannot agree to perform the ceremony for gay couples, and then get it over with in flash.<sup>65</sup> The distinction between a civil marriage and a church marriage, Eringa-Boomgaardt pointed out, has gradually faded. For many non-church-going people, the civil marriage has taken over many of the functions of the religious ceremony. It is a meaning-giving ritual. Hence the role of the registrar has increased in importance. The registrar and the couple plan the ceremony in advance; it requires active participation on the part of the registrar. Eringa-Boomgaardt's troubles lay here: she felt that she could not in good conscience participate with the happy couple in the planning and the ceremony itself. She would then be holding back a part of herself, and be feigning her true support and participation. In other words (her own words): she would be a hypocrite. To emphasize that it was the full participation that constituted the problem for her, and that she was not bent at standing in the way of gay people, she said that she had no problems taking notice of (that is: registering) an intended marriage, as that is a mere formality. But to participate in the full ceremony would be to betray God.

To define her own position, Eringa-Boomgaardt sought to inform herself on the subject of homosexuality. She did so mostly from a religious point of view. Her sister, working for an evangelical organisation that, as Eringa-Boomgaardt explained it to me, helps students read the Bible and develop leadership, provided material. Eringa-Boomgaardt valued her sister's opinion, especially because she lived abroad, and when she came to the Netherlands, she 'had a clear view of cultural developments'. In the car one day (in the late nineteen-nineties, so before the law enabling gay marriage

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<sup>64</sup> The 'Gereformeerde Kerk' is the 'Reformed Church'; the 'Nederlands Hervormde Kerk' is the Dutch Reformed Church – both 'gereformeerd' and 'hervormd' must be translated as 'reformed'.

<sup>65</sup> Interestingly, an archive article on the COC Internet site argues that the registrar should simply do his or her job, that is: check whether the papers are in order and the autographs in the right place; "the couple can find someone to make a nice speech themselves". Apparently, they would welcome a different treatment for homosexuals, if it meant that the legal obligations were fulfilled. See "Eindelijk kans op principiële uitspraak rechter".

came into view), her sister brought up the subject of gay marriage, which gave Eringa-Boomgaardt a serious fright. Then, while they were still driving, she had an experience that was very significant to her: enormous showers were followed by a rainbow, and maybe even (she was not sure anymore) a second rainbow. To her mind, this was no coincidence; it was a sign. We will see further on that Eringa-Boomgaardt consistently interpreted her situation in religious terms. As to her views on homosexuality: in essence, she thought, it was an identity problem. Homosexuality comes in percentages; the percentage is completely dependent on societal influences. Heredity does come in, though: one's posture and (the height of) one's voice may more readily give rise to identity problems, because in our society a low voice is seen as masculine, and a high voice as feminine, for instance. Damaging factors may play a role (and often do): abuse of children by their parents, a licentious life, indulging in free sex, or a combination of such elements will easily lead to identity problems in our society. After this explanation of her views on homosexuality, she said she had learned more about what God meant with marriage and sexuality. It was a solution for loneliness. The Bible, she said, was very clear on this point. She said she could understand homosexuality, but did not consider it an alternative. She already accepted the phenomenon, because of her brother's homosexuality. While homosexuality, in her view, was itself (the result of) an identity problem, in society it could lead to even greater identity problems. In combination with the 'fact' (as she saw it) of the greater promiscuity of gay people, this led Eringa-Boomgaardt to the conclusion that gay couples would turn out to be very unhappy. This, she said, was her final criterion: will gay people be happy? God wants us to be happy. It is his love, she said, that imposed these limits. "Homosexuality is very damaging." If she were not convinced of this, she would have nothing against gay marriage. She hated it when people (who were publicly silent about or supportive of gay marriage) conspiringly came up to her and said something like: "I understand; I think it's gross too." She did not think it was gross in any way; she just believed it was a mistake, and a damaging one at that. It may be thought paternalistic, but this was her line of thinking.

Was she open-minded? Was the 'information' she acquired unbiased? It does seem to have been selective. She did not mention genetic differences between gay people and heterosexuals, for instance (but then, many homosexuals prefer not to mention that either). Her views on homosexuality were deeply embedded in her Christian point of view, so much is clear. But on the other hand, she told me she had also read a book on 'gay theology', as she called it; a book written from the 'other' perspective. This made her doubt her views. Her brother did so too. Her gay brother and another sister, both lawyers, told her she was 'a danger to the state', that 'young gay people commit suicide because of her', and that she was a fundamentalist. People around her (apart from this brother and sister)



did not fully understand her position, she said, but they did respect it. Doubts notwithstanding, she felt there was only one course to take. She drew support from a number of things, as will be explained below.

Her view of the development of the case is as follows: before gay marriage was legally enabled, her gay brother (who, as I said before, was active in the COC) told her that the COC would do research regarding registrars that refused to marry gay couples. Her brother made it clear to her which side he was on, saying that they would get Spong to argue their case for them in court, if necessary.<sup>66</sup> The papers reported that there were no registrars in Leeuwarden who would refuse to marry a gay couple. Eringa-Boomgaardt thought this convenient and left it like that. Then, on April 2nd 2001, only one day after the law was adapted so as to allow gay marriage, Robert Grossnickel (chairman of COC Leeuwarden) requested to be married to his boyfriend by Eringa-Boomgaardt. I have described the reaction of the person behind the counter in the previous subsection.

Leeuwarden, Eringa-Boomgaardt felt, wanted to present itself as a progressive city. The immediate reaction was: how do we get rid of Nynke? 'Law is law' became the adagium in Leeuwarden, which was rather hypocritical, Eringa-Boomgaardt commented, because anyone could open a coffee shop (where cannabis is sold and used) or a brothel.

"In such a situation," Eringa-Boomgaardt said, "you discover the kind of network you're in." Her husband was a lawyer; she knew the chief editor of the *Friesch Dagblad* [Frisian Daily] well, and so on. She saw God's directing hand herein. She felt as if she were passing through the Red Sea, with on the one hand the trembling wall of water which was the gay community and the press, and on the other the wall of the Christian community and the 'gebedsbeweging' [prayer movement, a Christian revival movement] She was led across between these two enormous forces, her feet remaining dry.

Then there was another sign, when she opened the Bible and found this text in Isaiah: "...he made me into a polished arrow and concealed me in his quiver. He said to me, 'You are my servant...'"<sup>67</sup> She took this as a warning of what was coming, as an indicator of the role she was to play.

After the first publicity about the case, an alderman asked her how she was going to formulate her position. He pointed out the political importance of calling it a conscientious objection or not, and asked for an explanatory letter. She wrote such a letter, without ever explicitly speaking of conscientious objections. She sent her gay brother a copy, and to her

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<sup>66</sup> If it is true that this was premeditated, it is all the more unlikely that it is merely a coincidence that Grossnickel picked just that one registrar with scruples regarding gay marriage. It would then seem that they were expecting trouble, and deliberately heading for it. But I cannot corroborate Eringa-Boomgaardt's story.

<sup>67</sup> Isaiah 49: 2-3 (New International Version).

surprise, he was devastated. She did not understand this, for her formulations had been very cautious, in terms of a very personal judgement, something *she* could not do. The Bible formed her conscience. “With everything I said or did, I had my brother at the back of my mind,” she told me. This, she also interpreted as God’s work; this way she could never judge harshly about homosexuals. But she also said: “I could not get around my conscience.”

What did this term ‘conscience’ mean to her? She spoke of a truth for herself – this truth held for others as well, but she had no influence on others. “We live in a democracy.” She would not impose this truth on anyone, not even her children. “What they do with their upbringing is their own responsibility.” She said she had never wanted to be on the barricades. She was chosen for it. Being God’s servant, she wanted to do this. She gradually grew to her standpoint. Her conscience was sharpened. She doubted a lot: are things really the way I think they are? There was criticism from theologians and others. “There were many doubts,” she repeated. In her letter to the city of Leeuwarden she did not use the term ‘conscientious objection’. “The Bible is the norm.”

Things changed (for the better, from Eringa-Boomgaardt’s point of view) when (on May 1st, 2004) Geert Dales, formerly alderman in Amsterdam, became mayor in Leeuwarden. It may come as a surprise that his appointment benefited Eringa-Boomgaardt, and indeed it came as a surprise for her as well. Dales was the one who made the ‘pre-emptive strike’ against registrars with scruples about marrying gay couples. He had protested against Minister of State Cohen’s pragmatic stance, taking a principled stance himself. Moreover, he was partner in a gay marriage himself. Yet now, after a good talk with Van der Staaij, MP for the SGP fraction in parliament, he felt that a pragmatic solution ought to be found.<sup>68</sup> At the same time, the aforementioned VVD alderman A. Brok (also in the opposite camp, from Eringa-Boomgaardt’s point of view), left Leeuwarden to become mayor of Sneek. “The atmosphere,” Eringa-Boomgaardt told me, “changed completely; the Court of Mayor and Aldermen was now open to legal advice.”

Meanwhile, Eringa-Boomgaardt read a book about Daniel (the Daniel from the Bible, famous for being thrown in the lion pit, and remaining unharmed). It was about how Daniel dealt with his conscience, she said. There were three phases. The first phase was a phase of adaptation to and education in Babylonian customs. The second phase was one of troublesome adaptation and conditional cooperation (he had difficulties with food laws, for instance). In this phase, he went along with things to a certain point, to see what God thought about it. In the third phase, he was forbidden to pray. Cooperation then became impossible for his conscience.

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<sup>68</sup> The SGP is the smallest Christian political party represented in parliament.

Eringa-Boomgaardt used this example to illustrate that Christians, nowadays, go very far in what they agree with and go along with. I already said that she would even register the marriage of a gay couple; she used that example here. To participate in the meaning-giving ritual of a gay marriage would be comparable to Daniel's agreeing not to pray – the third phase. This would be a betrayal of God. Conscience, according to Eringa-Boomgaardt, is like identity in that it is shoved and pushed this way and that. There is much room, she said, in how you deal with it; even with a very strict conscience there is room for choices.

Seeing that she had come to the end of her story, I asked her to say a bit more about conscience and conscientious objection. About the difference between a conscientious objection and an 'ordinary' objection, she said: "Now it was: 'Here I stand, I can do no other', whatever the consequences. One can overcome a normal objection." Of course, she was asked to support her conscientious objection (which she had not labelled as such herself). For this purpose, she used an article about marriage (and gay marriage in particular) by the 'Evangelisch Werkverband' (an evangelical reform movement within the Dutch Protestant Church). This was also sent to the judge at that time. Finally, I asked her a bit more about the (supra-)individuality of her conscience. She said that conscience can never be an individual 'truth'; it has a basis, also in others who are of the same mind. "Had I been the only one who thought this way, I would have just left." But truth, for Eringa-Boomgaardt, is supra-individual. She would not recognize herself in a description of conscience as something purely individual, in the sense that it was based in and valid for the individual alone. "This is not an individual thing." She would not be blown away by the COC, she said. "I have too many roots for that. This tree does not fall over that easily." The only thing she did was to keep standing, to stay put – nothing more, she did not seek publicity or anything. "I received the strength to do so."

### **15.3.3. Eringa-Boomgaardt's conscience**

We have seen, not so much in this chapter, but rather in the previous, that all core elements of the symbol of conscience can be found in conscientious objections to military service, whether they are religious (in a narrow sense) or not. I have not yet asked whether Eringa-Boomgaardt's objections are indeed *conscientious* objections in all respects. This section, then, will analyse her story in terms of the core elements of the symbol of conscience: ultimate concern, intimacy, and the element of the witness.

The element of ultimate concern is clearly present in Eringa-Boomgaardt's case, both on the level of symbolization and on the experiential level. Eringa-Boomgaardt appeals to a superior moral-religious standard: the Bible, and, ultimately, God. She wishes to avoid a betrayal of God, and there is reference to God and the Bible throughout her story. The element of ultimate concern appears in both of its two guises: in that of

authority, as when she says that ‘the Bible is the norm’, but also in that of inspiration. The latter figures even more prominently than the former. It shows up in her account of the appearance of a rainbow, in her experience of crossing the Red Sea, in her reading of the words from Isaiah 49: “...he made me into a polished arrow and concealed me in his quiver. He said to me, ‘You are my servant...’”, and in the conclusion of her story: she received the strength to persevere. Sometimes, both elements are present simultaneously, as in her reading of and about Daniel: the Bible both tells her what to do (as an authority), and strengthens her resolution by presenting her with an example that she can hold on to, which is a form of inspiration. The way she spoke about the rainbow, the Red Sea, Isaiah, and Daniel, convinced me that the inspiration was genuine; moreover, that it had not left her.

The element of intimacy, like that of ultimate concern, is a pervasive presence in her story. Given the importance of inspiration, it could hardly be otherwise. While ultimate concern in the guise of authority may *seem* (but no more than that) to be relatively detached from the person (in the sense that it seems to come from without), with ultimate concern in the form of inspiration this is virtually inconceivable.<sup>69</sup> The images of inspiration Eringa-Boomgaardt uses suggest an involvement of the whole person; her crossing the Red Sea, and her being a polished arrow and God’s servant, do so in particular. There is clearly an intimate connection between her person and her conscience and conscientious objections. She explicitly connects conscience and identity where she says that her Christian identity came into play, and also where she compares conscience and identity in that they both leave room for different ways of dealing with them. Conscience, in her eyes, is a matter of ‘Here I stand..?’ (et cetera). Furthermore, she links conscience with her social identity: the network she is in. In no way does she try to shield part of herself from the matter – something that was perhaps made impossible by her having a gay brother. Finally, in several places, she emphasizes that her objections are very *personal*, in that she would not impose them on others. This is the form of the element of intimacy I have called ‘privacy’.

The element of the witness is often only implicitly present in more contemporary expressions and experiences of conscience, and this is the case here, too. It is implicit in her references to God, especially where she speaks of a betrayal of God. Not only is God an authority, he is also someone *who would know*, if she were to do otherwise than he could approve of. The story of Daniel, as she tells it, is that of someone who acts with the knowledge that his actions are witnessed – by God. He was trying to see how far he could go in the eyes of God (and in a sense he was trying to see *with* the eyes of God). She compares herself to Daniel; hence, she, too, feels ‘watched’ by God.

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<sup>69</sup> Recall that the element of the witness is more likely to occur in combination with that of ultimate concern in the form of authority.

It is clear enough, then, that Eringa-Boomgaardt's objections are conscientious. But are they conscientious objections in the sense of the previous chapter? Can we discern other aspects of the practice of conscientious objection in her case? The first thing that attracts attention is that she does not speak of conscientious objections herself; others came up with the label. She does interpret her objections in terms of conscience, though, and the label is certainly not misplaced. Her objections are a reaction to a demand: the local government demanded that she marry a gay couple. Then there is the aspect of public reasoning. Eringa-Boomgaardt explained her views in a letter to the Court of Mayor and Aldermen; the letter contained both an explanation of her views on homosexuality and an explanation of what the implications of these were for her work. Her reasons were *not* public in the sense that she made them public to the press, for she deliberately avoided the press, but this is not what public reasoning entails. It is merely the attempt to give reasons for one's stance in terms that others can understand; Eringa-Boomgaardt made this attempt (successfully, I believe), and with reasons that were the result of long and hard reflection. Her opponents may not have understood her in the sense of being able to go along with her reasoning, but they *did* understand what her position was and how it was supported. The problem was that they did not accept it as a valid ground for exemption. Finally, on the formal side of her conscientious objection, there are the aspects of acceptance of the consequences, and consistency. Some people may think it inconsistent that she would let her gay brother and his partner sleep in the same room of her house, while at the same time objecting to gay marriage. The charge of inconsistency should not be made too soon, however. Whether her behaviour is inconsistent with her beliefs or other behaviour can only be established on the basis of an evaluation of the story she can tell that incorporates these seemingly inconsistent elements. In this case, her story makes sense of these elements in a way that resolves any supposed inconsistency. The key factor here is Eringa-Boomgaardt's statement that she does not want to impose her beliefs on others, and has always refrained from attempting it. The charge of inconsistency *would* have been on firm ground, for example, if she had agreed to marry her brother and his partner, while refusing to marry other gay couples. In general, her position appears to be consistent with her 'biography'. Acceptance of the consequences is a more difficult point. There were no legal arrangements for this kind of case, as there were for conscientious objection to military service. Hence, there were no predetermined consequences that she knew she would have to accept. What consequences she would have to accept was a matter that she could exert influence on. Hence, it was only to be expected that she would try to minimize the consequences for herself. Furthermore, to do the opposite would have cast doubt on the firmness of her stance. Had she simply resigned, people would not have considered her to be the model of a

conscientious objector. In this case, the major consequence that she had to accept was that she had to go through a long period of uncertainty, involving all kinds of juridical procedures, media coverage, and problems in the private sphere. Had she come off worst in the end, she would have had to accept her discharge. She knew this, but there is no reason why she should not have tried to prevent this from happening.

As to the further aspects of conscientious objection: on the personal-experiential level we see exactly that mixture of certainty and doubt that I enlarged upon in the previous chapter. Eringa-Boomgaardt's case demonstrates (once again) that it would be a mistake to assume that conscientious objectors are people who are extremely certain of their views, and hence willing to go to great lengths in defending them. Eringa-Boomgaardt's doubt is characteristic, but in the end a position has to be taken, and though her concrete beliefs can never attain the certainty of ultimacy, she has to stand by them if not to do so would to her mind constitute a betrayal of what she is ultimately concerned about, in other words: of the ultimate that she is concerned about. The most interesting substantial aspect on the public level in the context of this case is that of the legal pressure valve, and this is so exactly because Eringa-Boomgaardt presents an example of the practice of conscientious objection in a context where conscientious objection does not exist as a legal principle. That means that conscientious objections as a legal pressure valve did not exist in this case. What makes this interesting is that the case shows how much tension could have been prevented (and how much time and money saved) if there *had* been this legal arrangement, if conscientious objection in this context had been institutionalised, and could therefore have operated as a legal pressure valve. Had such legal arrangements been made, this would probably have resulted in tensions with the opponents of such an arrangement, but it is doubtful whether this would have acquired comparable dimensions to the tensions that were allowed to build up now. Nor is it likely that anyone would have been harmed so much, *personally*, as in this case.

#### 15.3.4. Integrity

Many people would say that Eringa-Boomgaardt was trying to protect her integrity. Indeed, most of the more recent authors on conscience would say more or less the same thing.<sup>70</sup> I would not say it is untrue, but I think it is not the most fortunate description of her intentions. The phrase draws attention *to* the (wholeness of the) person, and *away from* experienced truth. Once again, it is the intentionality of conscience that is lost sight of. To say that conscientious objectors are, in the final instance, trying to protect their

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<sup>70</sup> See 15.2.3.

integrity, ignores the self-understanding of many of them.<sup>71</sup> Eringa-Boomgaardt speaks of a ‘betrayal of God’, *not* of a betrayal of herself or her integrity. Besides that, in so far as it diverts attention away from the contents of beliefs, it does not help us in understanding why different people object to different things. Of course, to explain conscientious objections in terms of the protection of one’s integrity does not logically preclude an investigation into the beliefs of the person involved. In fact, it *should* entail such an investigation. In practice, however, protection of integrity tends to come to serve as the final explanation of conscientious objection, *instead* of the ultimate concern at which the person aims, and which thus *constitutes* the wholeness, the integrity, of the person.

Instead of abandoning the popular notion of integrity, then, I prefer to use it somewhat differently.<sup>72</sup> Eringa-Boomgaardt’s case shows very clearly that a person’s integrity is not something fixed and ready at hand. When the time came that she had to make up her mind, Eringa-Boomgaardt did not have her fixed integrity already there, asking for protection. She was not ‘whole’ yet, but had to become so. Not only was her integrity not given, it could also not simply be discovered – it had to be constructed. So we see that, when Eringa-Boomgaardt could not avoid the question that had been

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<sup>71</sup> Indeed not all of them; Childress (1979), 316, adduces an example of a conscientious objector who says: “I am trying to, and I will, protect my sense of myself.” Still, this man, Arthur Miller, also expressed himself in terms such as: ‘I could not...’, and ‘my conscience will not permit me’. At any rate, that someone expresses himself in terms suggesting the will to protect his integrity does not mean that this is in fact his primary motivation. It might be, for instance, that he thought this would arouse more sympathy in his audience than the contents of his conscience. The other two examples Childress adduces mention the self, but are modern expressions of the element of the witness, rather than of the need to protect the moral integrity of the self. It is interesting to note that Wicclair, who writes that “appeals to conscience can be understood as efforts to preserve or maintain moral integrity”, proceeds to interpret this as implying that 1) the objector has core ethical values; 2) these are part of her understanding of who she is; 3) to perform a certain action would be incompatible with them. In other words: Wicclair builds the intentionality of conscience into his understanding of integrity. (Wicclair [2000], 213-124.) I believe he has misjudged which of these takes priority; protection of integrity is secondary.

<sup>72</sup> See 1.5.2 and 15.2.3. A.W. Musschenga rightly pointed out to me that the notion of integrity for which I propose an alternative is a *defensive* concept, as distinct from the notion of integrity as an *ideal*. My own view of integrity as presented here is not necessarily an example of the latter. It stays close to the original meaning of the word, and is intended to point out what the defensive notion easily obscures: that persons (or their thoughts, beliefs, memories, feelings, and so on) may show varying degrees of integration, and that certain situations are *calls* to moral integrity rather than occasions for demonstrating one’s moral integrity. On the latter point, cf. Childress (1979), 322.

lurking at the back of her mind for some time any longer, a *process of integration* started. This process coincides with the process of symbolic integration that constitutes the symbol of conscience. In the process of symbolic integration, the person becomes whole as well. Polanyi explained that it is not just the ‘subsidiaries’ that become integrated (‘thrown together’, in the literal translation of *symballein*) in the symbol, but (with them) the person as well.<sup>73</sup> Eringa-Boomgaardt, in this case, integrates herself in the symbol of conscience. From that moment on, as long as the (symbolic) integrity endures, this determines how she interprets her situation, herself, and everything she experiences.<sup>74</sup> Paul Tillich, in the section “Faith and the integration of the personality” in *Dynamics of Faith*, stated that “[t]he ultimate concern gives depth, direction and unity to all other concerns and, with them, to the whole personality.”<sup>75</sup> Whether Eringa-Boomgaardt was made into a ‘polished arrow’ I cannot say, but her surrender to the symbol of conscience did turn her into a vector aimed at (an) ultimate concern – in fact, the vector *is* the concern for the ultimate.<sup>76</sup>

An interesting effect in such a process of integration is that the person in question turns to a symbol that is ready at hand, the ‘obvious’ symbol to turn to. We may draw an analogy here to what historian Pierre Nora has called ‘lieux de mémoire’ (places of memory, or sites of memory). A ‘lieu de mémoire’ is a symbolic place where ‘memory crystallizes and secretes itself’. ‘Lieux de mémoire’ call forth a past that is no longer there. They are coagulations of experiences, and (as partly artificial constructs) they represent certain values. Moreover, ‘lieux de mémoire’ have the power ‘to carry people away’. Analogously, the symbol of conscience functions (though now less, and for fewer people, than it has done) as what we might call a ‘lieu de conscience’ – where ‘conscience’ means *consciousness*, not conscience! The symbol of conscience was most obviously a ‘place of consciousness’ in the seventeenth century, when ‘conscience’ seems to have sprung to mind almost whenever someone defended something important to him. The

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<sup>73</sup> Polanyi’s phrasing was that “not only the symbol becomes integrated but the self also becomes integrated as it is carried away by the symbol – or given *to it*”; Polanyi and Prosch (1975), 75.

<sup>74</sup> So there is a two-way movement: from subsidiaries to symbol, but also from symbol to subsidiaries. Polanyi expressed this in the loop in the arrow between subsidiaries and focal target.

<sup>75</sup> Tillich (1957), 105; see also the whole section from which this quotation stems: “Faith and the Integration of the Personality” (105-111).

<sup>76</sup> Magnetism provides a useful analogy for what happens here; a magnetic field changes the orientation of the particles in certain materials, having them all ‘face the same way’. There is an important situational influence, but it only works on materials with certain characteristics. (I owe this analogy to K. Schinkel.) For ultimate concern as concern for the ultimate, see Tillich (1957), 9-11. Cf. Murdoch (1974c), 100 and 102, who writes of ‘Good’ as a ‘magnetic centre’.



appeal to conscience functioned similarly to the appeal to a 'lieu de mémoire' then, and to a certain extent, it still does. Not only is 'conscience' what springs to a person's mind when he or she finds himself in a certain situation, it is also still quite generally recognized, it helps others to order the situation, it canalizes publicity concerning the case, et cetera. It can do so, because it is part of the political and ethical consciousness of the community.<sup>77</sup>

From the view of integrity taken here, it is no less to be expected that people will tend to associate it with the self than on a more traditional view. When conscience is explained in terms of integrity, we may expect the self to take centre stage there as well. Polanyi's schematic representation of the symbolic relation is illuminating here. The symbolic relation, we saw, looks like this:

S+ii  F-ii.

The subsidiaries are those experiences that together engender the symbol of conscience – experiences of ultimate concern, in part, and experiences of various kinds; 'immediate' and 'ordinary' experiences, is a distinction Tillich would make, for instance, the first relating to ultimacy, the second to concreteness.<sup>78</sup> The experiences are 'thrown together' in the symbol, thus integrating the self. So at the place of the F, the point of focal awareness, we find not only the symbol, but also, simultaneously, the self!<sup>79</sup> It is not surprising, then, that the self in its integrity figures so prominently in concepts of conscience. But this holds true for the symbolic relation in general. This means, on the one hand, that one could find the self in other symbols as well, but on the other hand, that there is indeed a peculiar relation of the conscience to the self. In many symbols, the self that is integrated 'covers' a much less significant (and much smaller) part of a person's life experience than in the case of conscience. Moreover, by necessity, some of the experiences that engender the symbol of conscience

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<sup>77</sup> See Nora (1989); I realize, of course, that the analogy is imperfect if we take into account other aspects of what Nora means by 'lieux de mémoire', but I think the analogy is helpful here.

<sup>78</sup> Tillich (1957).

<sup>79</sup> This is most easily discerned by others, who either have an overview of the symbolic relation, or simply witness how the self of someone who appeals to conscience manifests itself. The person integrating him- or herself in the symbol of conscience will not have him- or herself in focal awareness; yet because (s)he integrates him- or herself in the symbol that is in focal awareness, and because of the reflexive nature of both conscience and the process of integration, (s)he will probably find him- or herself attending to him- or herself more than usual, and at any rate (consciously or unconsciously) put themselves forward as they make their appeal to conscience.

are of a self-reflexive nature – otherwise there would be no experience of conscience. So in the case of conscience, both experience and symbolization tend towards unification and wholeness of the self, that is: towards integrity.

But Polanyi's rendering of the symbolic relation also explains what goes wrong when conscience is dissolved in self and the protection of integrity; for the figure above shows that intrinsic interest lies not with F, hence not with what lies in focal awareness, but with S, with the experiences integrated in the symbol! The self and its integrity may be in focal awareness, but they are not of intrinsic interest. That honour goes to the experiences, and with them to ultimate concern. This way, Polanyi's schematic representation of the symbolic relation, too, draws attention to the intentionality of conscience.<sup>80</sup> When the symbol is seen as intrinsically interesting, loss of meaning occurs because the intrinsically interesting experiences that are integrated in the symbol are forgotten.<sup>81</sup>

I have spoken of integrity in terms of a process of integration. To some, this may sound too much like constructivism, and they are partly right. There is an element of situation-dependent construction in such a process of integration. But it is seldom the case that a person's conscientious objections to something come as a total surprise to those who know him or her. Much depends on the degree to which someone has made up his or her mind on the subject. Moreover, conscientious objections can be 'predictable', given someone's background. So there is something 'already there' before the process of integration starts. But seldom, if ever, is integrity in a very full sense a given. Most people have reached acceptable levels of integrity in various areas, which means that feelings, beliefs, and actions in a certain area, or relating to a certain topic, have reached a fair level of integration. This does not mean that there are no inconsistencies at all, especially if we would take into consideration the feelings, beliefs, and actions belonging to other areas. In practice, only very few people are designated as 'persons of integrity'; assuming that this designation is sometimes correct, these would be people for whom conscience is not a mode of consciousness in which they are occasionally thrown, but a relatively stable presence, a habit of mind – perhaps *the* habit, the home, of mind. In that case, the intensity of conscience is lower than when conscience is a mode of consciousness in which we are temporarily thrown by the force of the circumstances as experienced by us; if it were not, pathology would be the likely result.<sup>82</sup>

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<sup>80</sup> Note that 'intentionality' here includes Voegelin's 'intentionality'.

<sup>81</sup> See 1.5.2.

<sup>82</sup> James Hogg's novel *The Private Memoirs and Confessions of a Justified Sinner* (1824) explores the pathology resulting from the combination of a puritan's oppressive belief in his own sinfulness and the conviction that he was one of the elect, and hence predestined to go to heaven. Cf. also Arendt (1971), 418.

#### 15.4. CONCLUDING REMARKS

Distrust and fear of the subjective conscience (or the subjectivity of conscience, on some views of conscience), of merely 'private opinion', are deeply rooted in Western thought. States in particular have shown themselves insecure in their dealings with the conscience of individuals that opposed them on some point. Conscientious objection to military service is the best-known example of such a situation. Traditionally, only members of small religious sects, the 'Peace Churches', conscientiously refused to take up arms. This situation was not experienced as particularly problematic by Western states.<sup>83</sup> In the twentieth century, the group of conscientious objectors became more diverse. Not all of them came from the traditional Peace Churches, and what is more: there were agnostics and atheists among them as well. At first, many states held on to the demand that conscientious objections be religiously grounded. They could not keep up this attitude, however, and both governments and theorists of conscientious objection became concerned that conscientious objection was becoming a dangerous or at least inapplicable concept. A 'new' conscientious objection is discerned: secular, subjective, private, and a far greater challenge to the state than the 'old' conscientious objection.

What should we make of this picture? We have seen that there is no justification for making a radical distinction between 'religious' and 'nonreligious' conscientious objections. They are all religious in the sense that they all express ultimate concern. Has the individual conscience become 'boundless', as has been claimed? This is not reflected in the number of conscientious objectors to military service in the Netherlands. Nor can just anything pass as a conscientious objection. The only way in which conscience is boundless is in its field of application. So far, however, there has been no sign of an unstoppable surge of idiosyncratic conscientious objections to a limitless number of practices. In fact, the plurality of beliefs with which the subjectivity of conscience is supposed to be connected, and which is supposed to be a defining characteristic of post-modern society, appears to hide itself behind unprecedented conformity. The term 'conscientious objection' itself is quite telling in this respect: it testifies to the fact that there is general agreement about something, but that there may be the odd exceptional individual who conscientiously disagrees.

It may be this general conformity of beliefs that problematizes a case like Eringa-Boomgaardt's. From the point of view of the secular majority, her conscientious objections to gay marriage are incomprehensible. They are not the secular, subjective objections supposed to be so problematic. Rather, they are very traditional conscientious objections. They have 'stayed behind' with respect to public opinion. In the eyes of some, this makes them suspect.

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<sup>83</sup> Absolutist objectors *were* considered a problem, however. Jehovah's Witnesses are the paradigmatic example.

For that reason, such people take a hard line, stating, for instance, that legislation regarding marriage is not interpretable.<sup>84</sup> They feel that if we allow this kind of conscientious objections, we will undermine the law. But this could then be argued for conscientious objection as such. What is more, we would start on the slippery slope of judging conscientious objections by the acceptability of their contents. It might also be argued that conscientious objections should only be accommodated in certain areas, as for instance in that of military service. However, to limit the number of areas in which conscientious objection is recognized is to impose limits on the field of application of conscience – and this is impossible. If the legitimacy of conscientious objection in one area is in doubt, it is in doubt *generally*, for the simple reason that conscience knows no borders.

That conscience knows no borders does not mean that conscientious objections must always be accommodated. A doctor who conscientiously refuses to perform operations that are generally accepted and uncontroversial parts of modern medicine, which they have been since long before the time (s)he started studying medicine, should not have become a doctor in the first place. If the objections are the result of a conversion, this conversion has rendered him or her unfit to be a doctor. But the legitimacy of conscientious objection in the field of medicine is not *as such* in question here.<sup>85</sup>

The legitimacy of conscientious objection, we should accept, does not depend on the contents of particular objections. It is a mistake to think that conscientious objections should only be accommodated when they reflect the generally accepted view on the subject; the whole point is that they do not.<sup>86</sup> It would also be a mistake to think that conscientious objection as such is problematic because it entails that sometimes ‘unacceptable’ conscientious objections will have to be accommodated. The importance of conscientious objections, whether ‘secular’ or ‘religious’, lies not in the concrete reasons adduced, but in the ultimate concern that expresses itself through them. That means that we do need to know what an objector’s conscience is about; that is, we need to establish that the objections are indeed conscientious, that the objector’s concern is with the *moral* quality of his or her own contribution to the process of reality. This means that the intentionality of conscience must not be forgotten, as is likely

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<sup>84</sup> Then mayor of Leeuwarden Van Maaren-Van Balen is reported to have said this in “Ambtenaar Leeuwarden moet homo’s huwen”. For such literalism on the side of the COC see “Intolerantie COC staat haaks op oude Nederlandse traditie; Gewetensbezwaren”, and “Homohuwelijk principezaak in Leeuwarden”.

<sup>85</sup> See Wicclair (2000) for an insightful article about conscientious objection in medicine; see Savulescu (2006) for a poor defence of the idea that conscientious objections have virtually no place in medicine.

<sup>86</sup> Although they may be based in generally accepted (if not lived up to) moral principles.

to happen if conscientious objection is taken to be, exclusively or primarily, an indication of a desire or need to protect the (moral) integrity of the self.

The problem of authenticity arises here: how do we know that a person truly has the conscientious objections (s)he claims to have? It should first be noted that the extent of the problem is easily exaggerated. It is only likely to arise in the context of compulsory military service. And even then there are still many reasons that might put off people considering to fake conscientious objections, public opinion being the most important one. Proceduralization enhances the problem, because it shifts attention away from the personal expression of experiences of conscience – paradoxically, given the stress on the individual and private nature of conscience in law and its interpretation. When every reasonable effort has been made to probe towards the experiences underlying a person's objections, there will still be some successful fakers. But it is better for a few of those to go undetected than for true conscientious objectors to see their appeal rejected.

I hope to have shown in this chapter (as in the foregoing chapters) that the best understanding of conscientious objections is gained when we stay close to the experiences from which they spring. The core of this understanding is the insight that conscientious objections express ultimate concern. This allows us to see the limitations of common interpretations of conscientious objection. Rather than interpreting them as indications of the need to protect one's integrity, I interpret conscientious objections in a way that does more justice to the self-understanding of (most) conscientious objectors, by locating their importance where they themselves would locate it.<sup>87</sup> The final conclusions to be drawn from all this for the philosophical foundation of conscientious objection will be presented in the following, final chapter.

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<sup>87</sup> See Wicclair (2000), 211, for an example of the importance of doing justice to people's self-understanding in this way.

## 16. Philosophical foundations of conscientious objection

### 16.1. THE BURDEN OF JUSTIFICATION

This book is the result of a search for (a) philosophical foundation(s) of conscientious objection. I interpreted the question as to such a foundation as follows:

*is there some characteristic of conscientious objections that sets them apart from other kinds of objection, such as to earn conscientious objections a special respect and corresponding treatment?*

This question could be analysed into the following three:

- 1) what are conscientious objections? (This question will be discussed in 16.2.)
- 2) is there something about them that sets them apart from other kinds of objection? (16.3); if so,
- 3) is this something that calls for a special respect and treatment, or can justify such respect and treatment? (16.4)<sup>1</sup>

Here, I wish to draw attention to a feature of the approach I have taken that might easily be missed.

My interpretation of the question as to the philosophical foundation of conscientious objection places the burden of justification on the side of those who would argue that there is such a foundation, and that conscientious objections are qualitatively different from other kinds of objection in a way that earns them, we might say: V.I.O. status (Very Important Objection). On the one hand this is not surprising, since the present study was occasioned by a case of conscientious objection, the public discussion of which underlined what was already clear in theory: that the legitimacy of conscientious objection is not self-evident. Specific cases of conscientious objection may lead to doubts about the legitimacy of conscientious objection in general. On the other hand, we see that the legitimacy with which the state makes its demands on citizens is seldom questioned.<sup>2</sup> But is the legitimacy of the specific demands made by ‘the other party’ always self-evident? A registrar conscientiously objects to marrying gay couples. She adheres to beliefs in this regard that some 50 years ago could have counted on the support of the majority of the population. But public

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<sup>1</sup> Once these questions have been answered, we will have arrived at a foundation both for the practice of conscientious objection and for legal provisions for conscientious objection. The answer to the main question should establish the legitimacy of the former, and thereby the requiredness of the latter.

<sup>2</sup> The case may be somewhat different for other demanding parties, like employers.

opinion has changed and the law has changed with it, and now the registrar is in the position that she has to justify living up to beliefs that were once self-evident to the majority but have ceased to be so. Another example: a man does not want to spend a year of his life learning how to kill other people most efficiently, learning blindly to obey orders, becoming skilled in the handling of weapons. Not to want these things are virtues in civic life. However, in many countries the legitimacy with which the state demands that young men do just this is still taken to be self-evident by a majority of the people. Such a situation would only have figured in the most blissful of dreams of seventeenth-century rulers. Simply because you are male and born within certain borders, the state has the right to demand that you serve a year in the military. I am not saying that this cannot (under certain circumstances) be justified. But is it self-evident? Is it a matter of *reason* that the burden of justification lies with conscientious objectors, or is it a matter of power?<sup>3</sup> I am inclined towards the latter, but to argue for it would require another book. I have chosen to accept the defensive position, which assumes the *prima facie* right of the state to make certain demands of its citizens or civil servants; of employers to make certain demands of its employees, et cetera. But it is good to keep in mind that this is not a matter of course. My taking this approach does *not* mean that I see conscientious objection as a privilege granted by the state, rather than a civil right.<sup>4</sup> It just means that I accept that the right to conscientious objection needs to be justified.

## 16.2. WHAT CONSCIENTIOUS OBJECTIONS ARE

There are many useful dictionary definitions of conscientious objection, but in the foregoing chapters I chose to go beyond them, to an understanding of conscientious objection in a number of its aspects, viewed from different perspectives. Most important with a view to the question I set myself the task of answering here is that conscientious objection is a *practice* of people we call conscientious objectors – a practice that presupposes a context, for conscientious objection is a relational concept. The concept arose to indicate

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<sup>3</sup> Some words spoken in 1916 by Mr. Herbert Samuel, member of the British House of Commons, draw attention to the fact that the duty to fulfil compulsory military service ought not to be ‘naturalized’ too easily: “Are you, in the case of these conscientious objectors, to arrest them and bring them before the Court, and impose fines, and if the fines are not paid, proceed to imprison them? Is it really contemplated that now, when for the first time you are making military service compulsory in this country, it should be accompanied by the arrest and imprisonment of a certain number of men who unquestionably, by common consent, are men of the highest character, and, in other matters, good citizens?” Quoted in Hobhouse (1917), 2, from *Hansard*, Wednesday, January 19, 1916.

<sup>4</sup> This difference is of crucial importance to absolutist objectors. Cf. Hobhouse (1917), 4.

a practice in the context of powerful modern Western states imposing certain demands on their citizens as a matter of right; a right that was not contested by the majority of citizens, but challenged by a small minority. One form the latter took was conscientious objection. To object is to throw something in the way, in this case in the way of the objector's taking a demanded course of action. What is thrown in the way is not simply, as many would have it, the objector's conscience, so that the individual conscience and the state would have to fight it out. The objector, thrown into the mode of consciousness we call conscience, throws him- or herself in the way. The state (or the demanding party in question) is then left with the choice to tread over the objector or to take an alternative route, as it were, which means that an exception is made in this individual case.

Focusing too much on the origins of the concept of conscientious objection might obscure the fact that objections on grounds of conscience have been made throughout history – objections that in all relevant respects compare with modern conscientious objections. Socrates saw the need for 'public reasoning', for consistency, for acceptance of the consequences even if it meant his death. So did Thomas More, and so did all the other pre-modern conscientious objectors I have referred to. This justifies the use of a broader concept of conscientious objection, which does not limit it to a fairly recent practice in a narrowly specified context.

The most essential characteristic of conscientious objections lies in the first word. Objections may have all the formal characteristics on the public level that also pertain to conscientious objections, but this would not make them eligible for the same treatment.<sup>5</sup> It is to 'conscientiousness' that we must look if we wish to find a philosophical foundation of conscientious objection.

### 16.3. WHAT SETS CONSCIENTIOUS OBJECTIONS APART FROM OTHER KINDS OF OBJECTION

An argument for a philosophical foundation of conscientious objection may take different aspects of conscientious objection as its point of departure. A Luhmannian foundation would start from the aspect under which we see conscientious objection as a 'legal pressure valve', as Carl Cohen so aptly put it. The legal principle of freedom of conscience and legal provisions for conscientious objection would then be justified by the fact that they function to preserve the stability of the social system. This would, on the face of it, be a pragmatic justification and hence a pragmatic foundation of conscientious objection, but it could have principled grounds; it could rest on a concern for

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<sup>5</sup> The likelihood of this increases when the consequences to be accepted are less severe (in comparison with the consequences of the alternative of complying instead of objecting).



the stability of the social system that might in turn depend on concern for the well-being of the people. Principled or pragmatic, this Luhmannian line of reasoning does provide conscientious objection with a philosophical foundation. Its immediate point of departure is the aspect of conscientious objection as a legal pressure valve, but this ultimately depends on the conscientiousness of the objections. A Luhmannian approach, then, does not belie the conclusion of the previous section.

However, what Luhmann would call ‘conscientiousness’ is not what I (and many others, though for different reasons) would call thus. Because he makes personal identity central to the concept of conscience, the latter becomes too broad a notion. Not everything that is constitutive of a person’s identity is a matter of conscience; nor, therefore, a suitable ground for ‘conscientious’ objection. The other way around, we cannot dismiss objections as nonconscientious simply because we disagree with them; nor can we deny the name ‘conscience’ to someone’s concerned awareness of the moral quality of his or her contribution to the process of reality if and because we cannot, in Smithian terminology, ‘enter into’ that awareness. This means that a certain degree of formalism in the approach of conscience and conscientious objection is necessary. An objection is conscientious when it is grounded in conscience; conscience is not to be identified with a particular set of moral principles. I have conceptualized it as a concerned awareness of the moral quality of one’s own contribution to the process of reality, including one’s own being. This is a rather formal concept of conscience, but only up to a point. It is about the *moral* quality of one’s own contribution (etc.) – ‘moral’ in the broadest sense of the word, but it is still a limitation. The concerned awareness pertains to an (often poorly articulated) conception of what it means to be a good person and to live a good life.<sup>6</sup> Such things can also be contemplated in a disinterested manner, but that is not conscience. Conscience implies concern; in conscience we experience things in a concerned manner. Behind this is ultimate concern in its aspect of the Good. We perceive (better would be: ‘prehend’) that there ‘is’ such a ‘thing’ as goodness, and on certain occasions at least it becomes clear to us that this matters *ultimately*. The appeal to conscience that the conscientious objector makes must be understood primarily as a symbolic expression of a certain class of experiences – experiences of conscience – in which ultimate concern is the key element.<sup>7</sup> The experience of conscience is typically either an experience of authority, in which a person feels strongly bound to obey a moral command that is addressed to him or her personally, or one of

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<sup>6</sup> See 8.6 about ‘morality’.

<sup>7</sup> This means that the objections put forward by a conscientious objector must not simply be seen as propositions to be judged on their truth-value; they are the concrete embodiment and the public translation of the symbol of conscience. It is from this fact that they derive their importance.

inspiration, in which the subject feels empowered and inwardly compelled to contribute ‘goodness’ to the world. Of course, the experience of conscience often lies somewhere between these ideal-types, and it includes other elements (in particular the elements of the witness and of intimacy).

All this makes conscientious objections qualitatively different from other kinds of objections, and in a way that differentiates them from (virtually) all other kinds of objections. On one side of the divide are objections that flow from ultimate concern; on the other side are those objections that do not. Conscientious objections find themselves in the first category, and although they seem in practice to be alone in it, it is theoretically possible that someone could put forward nonconscientious objections that do flow from and express ultimate concern.<sup>8</sup> In my view they would deserve equal treatment, but I need not argue for that here. That the divide of which I speak suggests a neatness and clarity that is seldom if ever present in reality (and perhaps particularly in moral matters) needs no argument. It will not always be easy to classify an objection as one kind or the other. Nevertheless, I believe that by focusing on experiences of conscience in the manner described in this book it will generally be possible to determine whether objections are conscientious or not. In unclear cases, the objector should receive the benefit of the doubt, especially since the demanding party usually has alternatives available that the conscientious objector must do without.

#### 16.4. WHY CONSCIENTIOUS OBJECTIONS DESERVE SPECIAL RESPECT AND TREATMENT

Conscientious objections differ from other kinds of objection in being conscientious; that much is obvious. But objections on grounds of conscience – I leave other characteristics of conscientious objection aside for the moment – differ from objections, say, on grounds of expediency in another way than the latter differ from, for instance, objections grounded in (non-moral) preferences.<sup>9</sup> Conscientious objections differ from virtually all other objections in being expressions of ultimate concern. It is this observation that supplies the reason why conscientious objections deserve a special respect and exceptional treatment not granted to other kinds of objection. By such respect and treatment I refer simply to legal provisions made for conscientious objectors, to committees set up to evaluate them, and so on. In Western democratic societies conscientious objections to compulsory military service tend to be treated with this kind of respect;

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<sup>8</sup> Because the notion of ultimate concern is not exhausted even by the broad notion of morality I use.

<sup>9</sup> Bij non-moral preferences I here mean preferences without relation to the moral quality of their objects.

sometimes this extends to other areas of objection as well. But on what grounds are conscientious objections granted this 'privilege'? Better put: what would constitute a legitimate ground?

The conclusion towards which this study has been moving from the beginning is that conscientious objections deserve special respect because they are expressions of ultimate concern. Ultimate concern gives meaning and direction to people's lives. Not to take conscientious objections into account would mean that people are (on certain occasions) denied the right to live up to their conception of the good life, their conception of what it means to be good.<sup>10</sup> Moreover, it would mean that people are punished for their search for meaning in life. Where no legal provisions for conscientious objectors exist, an essential element of what it means to be human is denied. Locke held that people could not be denied the right to care for their own soul, and this argument is still valid. But 'care for one's soul' is not a strictly internal affair; one's 'soul' cannot be separated from one's actions. To be able to 'care for one's own soul', to live up to one's own conception of a morally good and meaningful life, is a (non-moral) good, a value to be realized. It becomes hard to argue beyond this point: if this kind of meaning is not a good, it is unclear what is; as a result, 'moral good' would be a meaningless notion, too.

In the above I have provided positive reasons for allowing conscientious objection. There are also negative reasons, relating to the consequences of denying the right of conscientious objection. We have seen that conscientious objection involves a risk for the objector, a risk of a spiritual rather than material nature. A state that does not recognize conscientious objection – that does not allow freedom of conscience, except, perhaps, in the most minimal sense – takes a risk as well, of both a spiritual and a material nature. Suppose that it denies the right of conscientious objection on the basis of a supposedly objective vision of the good. The risk taken in that case is obvious: the vision might be wrong – in fact, the very notion that there might be a definitive vision of the good is problematic, if not perverse. The state would make the mistake of absolutizing itself. Other traditional arguments, like those pertaining to the problem of hypocrisy in enforcing outward conformity, are also still pertinent. There is no need to repeat them here. No civilized state can deny people the right to pursue a meaningful life, a life shaped not merely by force and circumstances, but also

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<sup>10</sup> For instance, when Thomas More stated that he could not in good conscience sign the oath he was requested to sign, he expressed his awareness that if he did, he would break his connection with the ultimate. Signing the oath was irreconcilable with his conception of the good. Even if he was frequently in doubt about what was good, he knew that this was conflict with it. This is the element of risk, and therefore of courage, involved in conscientious objection: the certainty that pertains only to the absolute is coupled with the uncertainty of its concrete embodiment.

by ultimate concern. Not to recognize a right to conscientious objection is to do just that. That other rights limit this right is self-evident; no right is absolute. But the question was whether a philosophical foundation for conscientious objection could be provided; in other words: whether we could point out some characteristic of conscientious objections that provides a good ground for assigning them a special status. In the foregoing, I have answered this question in the affirmative.

#### 16.5. THE DIFFERENCE BETWEEN MY APPROACH TO CONSCIENTIOUS OBJECTION AND OTHER APPROACHES

Having stated my case for the foundation of conscientious objection, it is worth considering in which respects my approach differs from other approaches to the subject; more particularly: to review the advantages of my approach over others.

The 'standard' approach today tells us that when someone appeals to conscience in the form of a conscientious objection, (s)he indicates that the matter in question is of great importance for him or her. So much is true. But when this importance is explained in terms of the psychological problems that would arise if the conscientious objection were not recognized (and/or exemption not granted), the core of the importance of conscientious objections is missed. A somewhat better common suggestion is that the conscientious objector is concerned to preserve his or her own (moral) integrity.<sup>11</sup> In this view, conscientious objections matter because (moral) integrity matters. But this view is also problematic. First of all, moral integrity is not a given. It is not something ready-at-hand, simply there to be protected when necessary. In the symbolic integration through which the symbol of conscience arises, the person expressing him- or herself is also integrated, and in particular: *morally* integrated. Secondly, what is at stake for the conscientious objector is not primarily his or her own integrity, but rather whether he or she will be involved in something that is irreconcilable with his or her own conscience. The conscientious objector is not primarily saying that (s)he wants to preserve his or her integrity, but rather that (s)he does not want to comply with the demand made on him or her, because this involves what they believe is a moral wrong. That it is one's *own* contribution to the process of reality with which conscience is concerned does indeed matter, but through a one-sided emphasis on integrity the intentionality of conscience is forgotten. And it is what conscience is (and conscientious objections are) *about* that matters most in the experience of the conscientious objector. A theory of conscientious objection is not obliged to accept the

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<sup>11</sup> Cf. Arendt, Luhmann, Childress.

objectors' self-understanding, but I take a theory that does justice to people's self-understanding to be preferable over one that does not.<sup>12</sup>

According to my approach, conscientious objections are expressions of ultimate concern; they relate to people's conceptions of what it means to be a good person, to their search for meaning in life. Not to recognize the right of conscientious objection is to deny people an essential part of what it means to be human; I take this to be both a non-moral and a moral evil.

Conscientious objections matter for *substantial* reasons; they matter because they are *conscientious* objections, not because of factors ultimately contingently connected with them (like possible psychological damage). To acknowledge this means for my approach that it recognizes the importance of conscientious objections in a way that does justice (as much as possible) to objectors' self-understanding. I locate their importance in the same place as they do. That does not mean that I adopt the concrete reasons brought to the fore by conscientious objectors, or that I derive the importance of conscientious objections from the 'quality' of those reasons. I derive that importance from my *interpretation* of those reasons as expressions of experiences of conscience and thereby of ultimate concern.

I recognize what makes conscientious objections so important in a way that does justice to the self-interpretation of conscientious objectors, because I interpret the adduced grounds for their objections 'sympathetically'. That means, for instance, that I do not attempt a psychological reduction of those objections. Nonetheless, conscientious objectors will not always agree with my interpretation. For some, conscience is the Voice of God in man, no more and no less; to such people, the idea that in these terms they symbolically express ultimate concern will not be equivalent. I still believe, however, that they would have to acknowledge that my approach respects their self-understanding in a way that reductionist approaches do not.

In the seventeenth century, freedom of conscience was sometimes held to obtain with regard to 'adiaphora', 'indifferent things'. What was of ultimate concern to the one was allowed by the other because to him it did not matter at all. Freedom of conscience was then not grounded in the importance of conscience, but in the supposed unimportance of things about which only the overly scrupulous were concerned. Somewhat analogously, the importance of conscientious objection(s) is often located theoretically in something that is 'besides the point' for conscientious objectors themselves; what the objectors say is supposedly irrelevant. In my approach, what conscientious objectors say *does* matter, because I want to know whether something is a symbolic expression of experiences of conscience (and thus of ultimate concern) or not. If it is, *this* is what lends the objections their

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<sup>12</sup> Assuming that the explanatory power of the theory is not diminished in other respects, of course.

importance – the same thing that gives them their importance for the conscientious objectors themselves, though in my case *interpreted* in terms of ultimate concern.

To locate the importance of conscientious objections in their *conscientiousness* seems to me more intellectually satisfactory than to have to adduce some other factor on which their importance would have to depend. That doing so corrects a one-sidedness (relating to the focus on integrity) and an oversight (with respect to the intentionality of conscience) of other approaches to conscientious objection is an added advantage. But there is another: to focus on experiences of conscience underlying conscientious objections, and to interpret these in terms of ultimate concern, greatly nuances the difference between ‘religious’ and ‘secular’ objections. Many historical discussions of the subject elaborate extensively on the secularization of conscientious objection in the twentieth century. It is argued that we are confronted with a ‘new’ kind of conscientious objection, radically different from the ‘old’ or ‘traditional’ kind.<sup>13</sup> One of the main differences is that the ‘new’ conscientious objection is not religiously grounded. Atheists appeal to conscience as well as Jehovah’s Witnesses; Quakers conscientiously object to military service, but so do some agnostics. This situation has often been experienced as problematic, both by states and by theorists of conscientious objection. If ‘secular’ objections must be recognized as well, are there any limits to what may pass as a conscientious objection? In my view, such reactions are overblown, such concerns unwarranted. All conscientious objections are religious in a broader sense of the term; they are all expressions of ultimate concern. This criterion is no less clear than the criterion that conscientious objections need to be religiously grounded.<sup>14</sup> Nor does it open the door to all sorts of objections. The advantage of my approach in this respect is that it offers a down-to-earth interpretation of conscientious objection that does not make too much of differences between various conscientious objections, and does not make a fuss where there is nothing to fuss about. At the same time, it furthers understanding between ‘religious’ (in the narrow sense) and ‘secular’ people, which is particularly relevant today, when ‘religious’ conscientious objections are poorly understood by the ‘secular’ majority.

The abovementioned advantages of my approach flow from my combination of (or my taking a middle road between) a formalistic and a

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<sup>13</sup> The prime example is Moskos and Chambers (ed.) (1993), who expressed this view in the title of the book they edited: *The New Conscientious Objection*; but the view is omnipresent.

<sup>14</sup> That such a criterion also requires interpretation is especially evident from jurisprudence regarding conscientious objection to military service in the United States.

substantialist account of conscience and conscientious objection, as explained in 16.3.

#### 16.6. CONCLUDING REMARKS

The previous sections form the conclusion of this book. Many questions have remained unanswered, or even unasked. In saying that conscientious objections are qualitatively different from objections grounded in, say, strong (non-moral) preferences, interests, or some other nonconscientious basis in a way that justifies their privileged treatment, I have said nothing about the potential seriousness of those other kinds of objection. If we take military conscription as an example, we can imagine cases in which objections grounded in *nonconscientious* moral reasons could lead to exemption for the objector. For instance, if it is evident that a certain war entails that war crimes are (and will continue to be) committed, this may provide a moral – and certainly not *necessarily* conscientious – reason for someone to object to his induction in the military. Moreover, the strength of such an objection would be evident to a great number, if not the majority, of people.<sup>15</sup> This kind of objection need not be conscientious, simply because a more abstract form of moral reasoning that is not characterized by the particular kind of concern involved in experiences of conscience may lead to this point of view; in other words, the objector need not enter the mode of consciousness we call conscience.<sup>16</sup> Even if he does, however, he still might not need to *appeal* to conscience in this case, given the likelihood (or the possibility at least) that his reasoning will draw the support of a sufficient number of those who evaluate his case.

When conscientious objections are confronted with reasons (conscientious or not) concerning life and death, it is not *a priori* clear which will have precedence over the other. In the Netherlands for instance, when a child will die because its parents (and sometimes also the child itself), being Jehovah's Witnesses, conscientiously refuse to allow a blood transfusion, parental authority is usually temporarily suspended so that the child can be

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<sup>15</sup> This example is provided by Donald A. Peppers in Peppers (1974).

<sup>16</sup> It is still possible, even likely, that ultimate concern is at the background of this kind of objection; but the prominence of ultimate concern in relation to one's own contribution to the process of reality is lacking. The objector, even though his objections are occasioned by the threat of his own induction in the military, argues that participation in this war entails participation in obvious wrongs *for anyone*. The moral quality of his own contribution to the process of reality is not in the focus of his attention. Whereas in moral reasoning, the focal point of attention lies solely with the object of the reasoning, an experience of conscience places the relation between an object and a subject (the self) in the foreground. So the focus of attention is different, and with that the subjective form of the awareness.

treated.<sup>17</sup> A case like this may also be construed as a case where the conscience of the patient (and his parents) meets the conscience of the doctor, as Jehovah's Witnesses acknowledge. This complicates the matter even further. Where a child's life is in the balance, the doctor's arguments, which are shared by the majority of people, are likely to prevail.

When conscientious objection is approached in a way that precludes evaluation of objections with regard to their contents, people will be tempted to comment that this would open the door to any kind of objection, however absurd or even 'dangerous'. They might want to define conscience in such a way that only 'agreeable' objections can be labelled conscientious, or alternatively to make a distinction (*a priori*) between acceptable and unacceptable conscientious objection. I understand the problem. It is tempting to reserve the label 'conscientious' for those objections for which one feels, or at least can summon, respect. The problem is quite similar to that of the 'tolerant nazi' in McKinnon's book on toleration. On what she calls a weak interpretation of toleration, anyone who disapproves of *or* merely *dislikes* others on whatever prejudiced grounds, but (for whatever reason) refrains from acting on this prejudice (while having the power to do so) must be called 'tolerant'. So there might very well be tolerant racists around. Now imagine that the racist acquires a new prejudice, but again refrains from acting upon it. Did (s)he become even more tolerant? This is an unsatisfactory conceptualization of toleration, so McKinnon tries a strong interpretation first, which she rejects for certain reasons, and then comes up with what she calls the 'wide' interpretation. "On this account, a person is tolerant when she refrains on principled grounds from acting on her disposition to oppress or interfere with another person or group in order to prevent them from engaging in practices or exhibiting properties to which she is responsibly opposed." Responsible opposition entails that one has taken the time to think about one's position, open-mindedly considered counterarguments, finally to come to a position that one genuinely takes to be justified. McKinnock plausibly asserts that not many racists will fit this description.<sup>18</sup> The same goes for conscientious objection; an objection

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<sup>17</sup> Mat (1999). It should be noted that Jehovah's Witnesses would not agree that the child would die *because of* their refusal to allow a blood transfusion. Life is held to be the gift of God; hence it is also for him to take. That does not mean that one should not try to prevent illness, accidents, and so on. Many medical treatments are also unproblematic for Jehovah's Witnesses, including certain organ transplantations. The refusal of blood has a Biblical background, but medical reasons are also adduced with references to academic journals. Jehovah's Witnesses point out the risks involved in blood transfusion, as well as equivalent alternative ways of treatment that do not involve blood transfusion. See [http://www.watchtower.org/medical\\_care\\_and\\_blood.htm](http://www.watchtower.org/medical_care_and_blood.htm).

<sup>18</sup> McKinnock (2006), chapter 2. McKinnock also notes that a belief that is genuinely taken to be justified differs from (and entails more than) a *sincere* belief.



grounded in mere prejudice is not a likely candidate for the label 'conscientious'. (Note that the objections put forward by the Jehovah's Witnesses mentioned above differ clearly from mere prejudice.) Nevertheless, it is theoretically possible that extremely unpleasant objections must be recognized as conscientious. Should we exclude them because they are unpleasant to us? Unless their recognition and a subsequent exemption from whatever obligation would clearly constitute an unacceptable harm or violation of other civil or human rights, they should be treated like any other conscientious objection.<sup>19</sup> This means, in fact, that they should always be treated like other conscientious objections, for consideration of other rights and of possible harm is always pertinent. It is a *prima facie* principle that conscientious objections should be accommodated; it is not an absolute right.

Reservations like the above have always been made with regard to conscientious objection. A common argument is that there will be frauds, people who wriggle out from under their obligations. Margaret Hobhouse answered this objection in 1917: "It is said that if the genuine men are let out of prison, some shirkers will go free. Even if this were so, it is not the custom of our law to punish one man for another's offence."<sup>20</sup> Besides, could an argument like this not be advanced for *any* government regulation and *any* law?

Worries about absurd or dangerous conscientious objections, or fake ones, reflect the primordial connection between freedom of conscience and the problem of order. But we have seen that to make provisions for conscientious objection is in fact a way of dealing with the problem of order. The problem of subjectivity, rather than posing a problem for states, might actually be a blessing. The more subjective conscientious objections are, the less likely it is that they are backed by organized opposition. Although conscientious objection is a common phenomenon in Western democratic societies, it remains the exception to the rule. The plurality (of beliefs, opinions, life-styles, et cetera) that is supposed to be a defining characteristic of post-modern society is nothing compared to the religious plurality of seventeenth century Europe. The latter was fundamental; it was organized; it was political, and as such constituted a continuous threat to political order. The plurality of today is by and large a private phenomenon, limited to a few restricted spheres and spaces. The authority and legitimacy of state power is not seriously questioned. Conscientious objectors, unless they are absolutist objectors, affirm rather than challenge the authority of the state. In a sense, then, post-modern Western societies exhibit an unprecedented uniformity; the people in them display a stunning level of conformity. Many factors have

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<sup>19</sup> It is impossible to define *a priori* what would constitute unacceptable harm, or an unacceptable violation of rights.

<sup>20</sup> Hobhouse (1917).

contributed to this situation; the Protestant and Enlightenment projects of the education of conscience are probably among them.

In this situation, if the right of conscientious objection is not self-evident, if its legitimacy is questioned, this has not so much to do with the uncontrollable subjectivity of conscience, but rather with a stifling demand for conformity that threatens the foundations of the constitutional state precisely as it tries to protect them.<sup>21</sup>

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<sup>21</sup> Cf. Roberts (1919), 337.



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## Samenvatting (Dutch summary)

Doel van dit proefschrift is te komen tot een wijsgerige (filosofische) fundering van gewetensbezwaren. Ook al is de dienstplicht in Nederland opgeschort (niet afgeschaft), gewetensbezwaren hebben mensen ook hier nog steeds, in allerlei verschillende contexten. (En in veel andere Westerse landen bestaat de dienstplicht natuurlijk nog wel.) Deze term, 'context', kunnen we op verschillende manieren opvatten. We kunnen spreken van gewetensbezwaren in de medische context, de militaire, of die van de ambtenarij. Maar we kunnen ook spreken van gewetensbezwaren in de context van abortus, dienstplicht, of het homohuwelijk. Er zijn mensen die menen dat er geen plek is voor gewetensbezwaren in bepaalde contexten, in de eerste zin van het woord. Er wordt bijvoorbeeld gezegd dat artsen of verpleegkundigen geen beroep zouden moeten mogen doen op gewetensbezwaren. Anderen betwisten de legitimiteit van gewetensbezwaren in specifieke contexten, in de tweede zin van het woord. Dan wordt bijvoorbeeld beweerd dat een gewetensbezwaar nooit een grond mag zijn een homo-stelletje niet in de echt te verbinden, of een abortus uit te voeren. Deze zaken worden gezien als sociaal geaccepteerd, zelfs als iets waar mensen recht op hebben. Er zou dan geen plaats zijn voor gewetensbezwaren tegen participatie in deze zaken.

Hoewel dit soort argumenten niet de legitimiteit van gewetensbezwaren in het algemeen betreft, ondermijnt het deze indirect wel. Want kunnen we gewetensbezwaren beperken tot specifieke terreinen? Willen we dat mensen hun geweten inschakelen als ze het ene gebied betreden en weer uitschakelen als ze het andere binnengaan? Zelfs als we erkennen dat gewetensbezwaren in sommige contexten (in de eerste zin van het woord) problematischer zijn dan in andere, kunnen we dan *a priori* zeggen dat er in sommige contexten geen plaats voor is? Ik geloof dat dat in strijd zou zijn met de aard van het geweten en gewetensbezwaren. Wanneer op voorhand bepaalde gebieden worden aangewezen als gebieden waarin gewetensbezwaren geen plaats kunnen hebben, staat de legitimiteit van gewetensbezwaren in het algemeen op het spel. Dit geldt ook wanneer de legitimiteit van gewetensbezwaren tegen een specifieke zaak (bijvoorbeeld het sluiten van een homohuwelijk) in twijfel wordt getrokken. De gedachte dat op voorhand kan worden aangewezen door een maatschappelijke meerderheid of dominante groep tegen welke zaken mensen gewetensbezwaren mogen hebben en tegen welke niet, miskent de aard van het geweten, alsmede de functie van de accommodatie van gewetensbezwaren in wetgeving. Wanneer iemand een beroep doet op gewetensbezwaren, heeft hij of zij per definitie bezwaar tegen iets dat maatschappelijk geaccepteerd is en algemeen gezien wordt als iets dat redelijkerwijs van mensen verlangd mag worden. Een onderscheid tussen



acceptabele en onacceptabele objecten van gewetensbezwaren zou gewetensbezwaren overbodig maken.

Tenslotte zijn er mensen die zich zorgen maken over bepaalde 'gewetensinhouden'. Er is al vaak opgemerkt dat zich in de twintigste eeuw een nieuw soort gewetensbezwaren heeft ontwikkeld, die een totnogtoe ongekend probleem vormt voor de staat. (Deze observatie is zeer betwistbaar, maar dat laat ik hier terzijde.) De 'nieuwe' gewetensbezwaren zouden nieuw zijn op drie manieren: 1) ze zijn in het algemeen seculier, in plaats van religieus; 2) ze komen op veel grotere schaal voor; 3) ze blijven niet beperkt tot de context van de dienstplicht, maar komen overal voor. Met name het eerste punt baart bepaalde auteurs zorgen. Er zijn nog steeds mensen die menen dat een 'seculier gewetensbezwaar' een *contradictio in terminis* is. De meesten die de (vermeende) seculiere kwaliteit van gewetensbezwaren als problematisch beschouwen, doen dit echter omdat zij er een probleem in zien voor de definieerbaarheid van gewetensbezwaren. Ze zijn in hun ogen moeilijker te onderscheiden van andersoortige bezwaren. Dit moeten we tegen de achtergrond zien van historische ontwikkelingen in het denken over het geweten. In de negentiende eeuw werd het geweten door mensen als Bentham, Darwin, Nietzsche en Freud ontmythologiseerd. In de twintigste eeuw lieten psychologen en filosofen het begrip grotendeels vallen. Dit betekenisverlies van het gewetensbegrip heeft zeker bijgedragen aan twijfel over de status van gewetensbezwaren.

Dit alles vraagt om een filosofische fundering van gewetensbezwaren. Ik wil weten of de praktijk van het zich beroepen op zijn of haar geweten filosofisch gelegitimeerd kan worden, maar ik wil dit ook weten voor de juridische accommodatie van gewetensbezwaren. Het tweede vloeit voort uit het eerste. Ik heb de vraag naar een filosofische fundering van gewetensbezwaren als volgt geoperationaliseerd:

*hebben gewetensbezwaren een bepaald kenmerk dat hen onderscheidt van andere typen bezwaren, van dien aard dat gewetensbezwaren een bijzonder respect en een overeenkomstige behandeling verdienen?*

Als ik een dergelijk kenmerk vind, heb ik een filosofische fundering van gewetensbezwaren gevonden. Ik probeer bovenstaande vraag te beantwoorden door een antwoord te vinden op de volgende drie deelvragen:

- 1) wat zijn gewetensbezwaren?
- 2) hebben gewetensbezwaren een kenmerk dat hen onderscheidt van andere typen bezwaren? zo ja,
- 3) vraagt dat kenmerk om een bijzonder respect en een bijzondere behandeling van gewetensbezwaren, of kan het zulks rechtvaardigen?

Om de eerste vraag te beantwoorden (welk antwoord mij ook het materiaal aanreikt om tot antwoorden op de tweede en derde vraag te komen) is het van essentieel belang (zo beargumenteer ik in het boek) inzicht te hebben in het geweten en gewetensvrijheid. Derhalve bestaat het boek uit drie delen, één over het geweten, één over gewetensvrijheid, en tenslotte één over gewetensbezwaren. In het derde deel bevindt zich het afsluitende hoofdstuk van het boek, waarin ik mijn antwoord formuleer op de vraag naar de filosofische fundering van gewetensbezwaren.

In het eerste deel van mijn proefschrift geef ik een overzicht van de historische ontwikkeling(en) van gewetensuitdrukkingen en –opvattingen, van het Oude Egypte en de Klassieke Oudheid tot in de (eenen)twintigste-eeuws Westerse wereld (Europa en de Verenigde Staten), vanuit het gezichtspunt van het betekenisverlies dat zich in deze ontwikkeling(en) heeft voorgedaan. De gedachte die aan de basis van dit overzicht ligt, is dat ‘geweten’ primair dient te worden opgevat als een symbool dat uitdrukking geeft aan een bepaalde klasse van ervaringen, en niet als een begrip dat simpelweg verwijst naar iets in de tastbare werkelijkheid.

Aan de hand van (onder andere) Michael Polanyi’s symbooltheorie laat ik zien hoe een symbool zijn betekenis kan verliezen. Polanyi maakt onderscheid tussen tekens (“signs”) en symbolen (“symbols”). Hierbij horen twee typen betekenis, die op verschillende manieren tot stand komen. Polanyi noemt deze manieren ‘indicatie’ en ‘symbolisering’. Een eenvoudig voorbeeld van het eerste is het met de vinger ergens naar wijzen. De wijzende vinger geldt hier als teken. We hebben, zo zegt Polanyi, een ‘subsidiary awareness’ van de vinger; dat wil zeggen: een ondersteunend bewustzijn. De vinger bevindt zich echter niet in het centrum van onze aandacht, want we kijken vanzelf *van* de vinger *naar* datgene waarnaar hij wijst. Van dat laatste hebben we een ‘focal awareness’ (focaal bewustzijn). Betekenisgeving heeft dus een ‘from-to structure’ (van-naar structuur). Datgene (vaak meerdere dingen) waarvan we een ondersteunend bewustzijn hebben, *integreren* we in het ‘focal target’, in het doel, het geheel, waarin de ‘subsidiaries’ betekenis krijgen. De wijzende vinger is betekenisvol *als* teken van iets anders. Hij is zelf niet interessant. Vandaar dat wanneer iemand strak naar de vinger blijft kijken, in plaats van naar het aangewezen, betekenis verloren gaat. Doordat de van-naar structuur wordt opgeheven, treedt betekenisverlies op. Dit gebeurt bijvoorbeeld ook wanneer iemand een woord heel vaak achter elkaar herhaalt, zoals Mr. Bean in één aflevering van de comedy-serie doet met het woordje ‘big’. Na verloop van tijd wordt het een betekenisloze klank. Ook symbolen kunnen hun betekenis verliezen, maar hier verloopt dit anders. Polanyi beschrijft symbolische betekenisgeving ook als een relatie tussen ‘subsidiaries’ en een ‘focal target’. Er zijn echter belangrijke verschillen. Een teken staat niet in het centrum van de aandacht, maar een symbool wel. In het geval van ‘indicatie’ is het aangewezen, datgene waarop onze aandacht gericht is, ‘intrinsiek interessant’. Het teken is

dat niet. In het geval van symbolisering staat het symbool in het brandpunt van de aandacht, maar zonder dat het intrinsiek interessant is. Het interessante zit hem juist in de zaken waarvan we een ondersteunend bewustzijn hebben en die geïntegreerd worden in het symbool. Een nationale vlag, bijvoorbeeld, is in zichzelf een oninteressant stukje stof; maar *omdat* het de nationale vlag is, is het toch veel meer. Mensen integreren al hun ervaringen die op de één of andere manier met hun land (hun 'natie') verbonden zijn in dat ene symbool: de vlag. Hierdoor is de vlag bijzonder betekenisvol, zonder dat het ding op zich interessant is. Nu kunnen symbolen hun betekenis ook verliezen, en wel op verschillende manieren. Ik noem hier alleen de belangrijkste: betekenisverlies treedt hierbij op, wanneer een symbolische relatie wordt aangezien voor een relatie van indicatie; dat wil zeggen: wanneer mensen een symbool aanzien voor een teken. Wanneer dat gebeurt, verliest het symbool zijn betekenis, omdat er geen 'subsidiaries' meer in geïntegreerd worden. In plaats daarvan gaan mensen zoeken naar datgene waarnaar het veronderstelde teken verwijst. Misschien komen ze uit bij de 'subsidiaries' van het symbool, maar een symbool verwijst daar niet naar – want een symbool verwijst *überhaupt* niet. Twee mogelijkheden zijn zeer waarschijnlijk: dat verschillende mensen heel verschillende 'verwijzingen' vinden, en dat mensen helemaal geen 'verwijzing' vinden. Dat laatste is in zekere zin consistent, want een symbool verwijst nergens naar.

Welnu, in het eerste deel van dit proefschrift laat ik zien hoe het symbool 'geweten' zijn betekenis verloor, doordat mensen de symbolische relatie waarom het ging, op zijn gaan vatten als een relatie van indicatie. Dit heeft precies de twee gevolgen gehad die ik hierboven als belangrijkste mogelijkheden noemde: sommigen kwamen tot de conclusie dat er niet zoiets is als het geweten, dat 'geweten' een leeg begrip is. Jeremy Bentham is hiervan het mooiste voorbeeld. Anderzijds heeft het betekenisverlies van het symbool 'geweten' geleid tot het ontstaan van een enorme veelheid aan verschillende, soms tegenovergestelde, gewetensconcepten. Wanneer we willen weten wat gewetensbezwaren zijn, kunnen we niet tevreden zijn met een keuze uit één van de bestaande concepten; evenmin kunnen we volstaan met er simpelweg een eigen concept aan toe te voegen. We moeten eerst teruggaan naar een symbolisch verstaan van het geweten. Aan de hand van 'vroegere' gewetenservaringen, uit het Oude Egypte en uit de Klassieke Oudheid (namelijk die van Socrates, zoals weergegeven in Plato's *Apologie*), analyseer ik het symbool 'geweten' – een symbool dat ook bestaat zonder de term 'geweten' of een voorloper ervan zelf. Ik onderscheid drie kernelementen: 1) het element van 'ultimate concern' (ultieme of absolute betrokkenheid; een betrokkenheid op het absolute); 2) het element van 'intimacy' (intimiteit); en 3) het element van 'the witness' (de getuige). Hiervan is het element van 'ultimate concern' het meest fundamenteel. Kort gezegd gaat het hierbij om de (symbolische uitdrukking van) een ervaring van een superieure standaard, in de vorm van een te gehoorzamen gebod, of een

inspirerend ideaal. Mensen geven hieraan verschillende concrete inhouden, maar bij een beroep op het geweten gaat het altijd om een beroep op iets dat van absoluut belang is. 'Ultimate concern' verleent betekenis en richting aan menselijk handelen en het leven in het algemeen. Het symbool 'geweten' is één mogelijke (en een belangrijke) uitdrukking van 'ultimate concern'. Op basis van dit inzicht en het bredere inzicht in het symbool 'geweten', kom ik in hoofdstuk 8, het laatste hoofdstuk van deel I, tot de formulering van een eigen 'fluid concept' (vloeibaar begrip) van het geweten – een concept dat geïnformeerd wordt door het inzicht dat het symbolische verstaan primair is en het conceptuele secundair, en dat daardoor een verabsolutering van zichzelf onmogelijk maakt. In het algemeen neigen gewetensconcepten ertoe één aspect van het ervaringscomplex waaraan het symbool 'geweten' uitdrukking geeft te verabsoluteren, en zichzelf daarmee tot het concept uit te roepen dat de essentie van het geweten te pakken heeft. Met mijn 'fluid concept' probeer ik dat te voorkomen. Mijn gewetensconcept luidt als volgt: het geweten kan worden opgevat als een *concerned awareness of the moral quality of our own contribution to the process of reality, including our own being* (een betrokken/bezorgd bewustzijn van de morele kwaliteit van onze eigen bijdrage aan het proces van de werkelijkheid, inclusief ons eigen wezen). Met de beperkingen van het conceptuele verstaan in ons achterhoofd, kunnen we profiteren van de relatieve scherpte die dit concept oplevert in vergelijking met een symboolanalyse, en die het spreken over het geweten vergemakkelijkt.

In deel II onderzoek ik allereerst de conceptuele relaties tussen geweten en gewetensvrijheid. Vervolgens (in hoofdstuk 10, dat de kern van deel II vormt) behandel ik de tweedimensionale problematiek die in de kern van de theorie en praktijk van gewetensvrijheid ligt. Het gaat hierbij om het probleem van de *orde*, waarbinnen de politieke orde en de orde in de menselijke geest (in het denken) van elkaar onderscheiden kunnen worden. Het tweede kan ook het probleem van de subjectiviteit genoemd worden. In eerste instantie (in de vroegmoderne tijd) wordt dat als een probleem in zichzelf beschouwd: mensen die niet het juiste geweten hebben zijn verdoemd; hun ziel gaat verloren. Langzamerhand raakt dit motief op de achtergrond en is het probleem van de subjectiviteit vooral nog van belang in zoverre het de politieke orde betreft. Met het oog op de stabiliteit van de politieke orde kan gewetensvrijheid wel of niet worden toegestaan; beide mogelijkheden zijn uitgetoet. Na verloop van tijd, als kerk en staat gescheiden belangen worden en het denken in termen van religieuze waarheid en zieleheil plaatsmaakt voor dat in termen van belangen en belangengroeperingen, krijgt de eerste optie (gewetensvrijheid *wel* toestaan) de overhand – zij het eerst in zeer minimale vorm. De vrijheid die aan het individuele geweten wordt toegekend wordt ideologisch ondersteund door natuurrechtelijk denken, maar ook door met name radicaal Protestants gedachtegoed, waarin de heiligheid van het individuele geweten en

individuele autonomie centraal staan. Mede onder invloed hiervan groeit ‘gewetensvrijheid’ ook uit tot een krachtig symbool, waarmee de Westerse wereld zich graag identificeert.

Wetgeving die ruimte maakt voor gewetensbezwaren is één van de meest tastbare belichamingen van gewetensvrijheid in onze tijd. Het is voortgekomen uit de ‘dynamiek van de orde’ waarin ik in deel II aandacht besteedde. Terecht merken auteurs als Carl Cohen en Niklas Luhmann op dat deze juridische ruimte voor gewetensbezwaren functioneert als een ‘pressure valve’ (de term is van Cohen), een uitlaatklep die opengaat als de druk te hoog wordt. Ruimte voor gewetensbezwaren komt de stabiliteit van de politiek orde, of in Luhmanns termen: van het sociale systeem, ten goede. Voor Luhmann is de (vermeende) subjectiviteit van het geweten geen probleem. Het gaat er volgens hem niet om welke ‘inhoud’ een gewetensbezwaar heeft, maar of het werkelijk om een *gewetensbezwaar* gaat. Volgens Luhmann is dat het geval wanneer iemands identiteit op het spel staat; *de* gewetensvraag is: “Kan ik dit doen en nog steeds mezelf zijn?” Wanneer iemand hiermee in problemen doet (bijvoorbeeld als hij in dienst moet), levert dit spanningen op binnen die persoon, in de omgeving van die persoon, en uiteindelijk in het sociale systeem als geheel. Wetgeving die gewetensbezwaren accommodeert voorkomt, aldus Luhmann, dat mensen tot het bittere eind volgens hun geweten moeten handelen; dat wil zeggen: het voorkomt dat het einde bitter is, bijvoorbeeld door alternatieve dienstplicht aan te bieden, of een ander alternatief, al naar gelang de context. Op deze wijze neemt de spanning af en blijft de stabiliteit van het sociale systeem gewaarborgd. Zo beschermt het sociale systeem zichzelf dus.

Het probleem van de subjectiviteit, zei ik zojuist, speelt bij Luhmann geen rol. In een andere zin keert het echter toch terug: de confrontatie met de staat (of een andere organisatie) kan leiden tot ‘wanorde’ in iemands geest; mensen komen onder druk te staan. Het gaat hier dus om psychologische (in plaats van epistemologische) ‘wanorde’. Daarom speelt de stabiliteit van het *persoonlijke* systeem ook zo’n belangrijke rol in Luhmanns denken. Het theoretische gevolg hiervan kan zijn dat de stress die iemand ondergaat de maat wordt van diens gewetensvolheid. Bij veel recente, door de psychologie beïnvloedde opvattingen van geweten en gewetensbezwaren zien we dat gebeuren. Evenals Luhmanns theorie zijn veel recente gewetensconcepten *functionalistisch*; ze beschouwen het geweten veelal als een functie van het persoonlijke systeem, een functie die in werking treedt als dat systeem op een specifieke wijze bedreigd wordt. Vandaar dat gewetensbezwaren tegenwoordig vaak worden opgevat als pogingen de eigen identiteit en integriteit te beschermen – dat wordt gezien als de functie van het geweten (of de functie die we ‘geweten’ noemen). Hoewel ik het goed vind dat functionalistische gewetensopvattingen formalistisch zijn, in de zin dat ze abstraheren van de inhoud van het geweten, geloof ik dat ze daarin te ver gaan. Iemands identiteit kan op het spel staan, zonder dat dit een

gewetenskwesie is. Bovendien: te zeggen dat een gewetensbezwaarde erop uit is zijn of haar eigen identiteit te beschermen miskent het zelfverstaan van gewetensbezwaarden. Het gaat een gewetensbezwaarde er primair om dat datgene wat van hem of haar verlangd wordt, slecht is. De morele kwaliteit van de van hem of haar verwachte bijdrage aan het proces van de werkelijkheid wordt negatief beoordeeld. We moeten dus niet vergeten dat het geweten *ergens over gaat*, dat het geweten intentionaliteit kent. Het geweten is niet slechts een functie binnen de grenzen van een persoonlijk systeem, maar betreft de relatie tussen een persoon en de werkelijkheid daarbuiten, en in het bijzonder de morele kwaliteit daarvan. 'Morele' kwaliteit moet zeer breed worden opgevat; het kan niet volledig 'gezuiverd' worden van het religieuze. Het geweten is in zekere zin altijd religieus. Vandaar dat ik de term 'ultimate concern' gebruik om het voornaamste kernelement van het symbool 'geweten' mee aan te duiden – een term die Paul Tillich gebruikte om de essentie van religieus geloof mee aan te duiden.

Gewetensbezwaren doen er niet primair toe vanwege eventuele psychologische schade die gewetensbezwaarden zouden kunnen oplopen. Ze doen ertoe omdat het *gewetensbezwaren* zijn. Hierin onderscheiden ze zich van andere typen bezwaren, hoe serieus ook. Een essentieel onderdeel van gewetensbezwaren is hun relatie tot 'ultimate concern'. Terwijl andere typen bezwaren uiteindelijk altijd zaken van relatief belang betreffen, gaat het bij gewetensbezwaren om een uitdrukking van 'ultimate concern' met betrekking tot het Goede. (Theoretisch is het denkbaar dat een bezwaar 'ultimate concern' uitdrukt zonder een gewetensbezwaar te zijn, maar ik geloof dat dat vrijwel niet voorkomt. Wanneer het wel voorkomt, verdient zo'n bezwaar mijns inziens een zelfde behandeling als gewetensbezwaren.) Hiermee komen we bij de fundering van gewetensbezwaren, bij de legitimiteit van de praktijk en de juridische accommodatie ervan. De reden dat gewetensbezwaren een bijzonder respect en een navenante behandeling verdienen is dat ze, in tegenstelling tot 'gewone' bezwaren, uitdrukking geven aan 'ultimate concern', aan dat wat betekenis en richting geeft aan het leven van mensen. Hier geen ruimte voor te maken betekent dat mensen een essentieel element van hun mens-zijn wordt ontzegd.

