

## Quod dubitas, ne feceris – Kant on Using Conscience as a Guide

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There is a vital feature of Kant's theory of conscience that interpreters invariably fail to mention. The reason for this omission is not entirely clear. Some may feel no need to discuss it because they take it for granted. In all likelihood, however, it is simply overlooked by the majority of those who write on the topic. In either case, the matter deserves to be clarified in a brief discussion note.

### § 1.

Part IV of Kant's *Religion within the Boundaries of Mere Reason* contains a brief account of how conscience can serve as a guide "for moral decisions that demand the most thoughtful consideration" (*in den bedenklichsten moralischen Entschliefungen*, AA VI 185.16–17).<sup>1</sup> Conscience is dubbed "a consciousness that is by itself our duty" (AA VI 185.18–19). As emerges a little further down, what Kant means by this enigmatic remark is that we must, when we are about to act, be conscious of having a good or clean conscience.<sup>2</sup> The consciousness "that an action *that I want to undertake* is right [*recht*] is unconditionally our duty" (AA IV 185.25–186.1). If we are to any degree uncertain we must refrain from doing it: "It is a moral principle that requires no proof: one ought to venture *nothing that runs the danger that it might be wrong* [*daß es unrecht sei*] (*quod dubitas, ne feceris!* Pliny)" (AA VI 185.23–25).<sup>3</sup> Kant opposes this principle of caution to "probabilism" (AA VI 186.7), glossed as the view that holding the

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1. All translations used – rather than mentioned – in this paper are my own.

2. Kant is obviously focusing on conscience is its prospective role. In his late lectures and writings, he distinguishes between prospective and retrospective conscience, i.e. between conscience before and after the deed. In its former function, conscience warns us against certain courses of action. In its latter function, it passes a verdict upon what we have done, which results in either a bad or a clear conscience. The idea – borrowed from Baumgarten, *Ethica*, § 181 – that there is a third, 'concomitant' kind is to be found in the early lectures on ethics (e.g. Collins, AA XXVII 356.23). But it is ultimately dismissed on the grounds that there is no room for it (see Vigilantius, AA XXVII 616.29–35). Before the act, conscience raises questions about proposed courses of action. After the act, conscience at times condemns what we have done. But both prospective and retrospective conscience can declare our acts legitimate. What we are about to do can be right; it is possible that we know what we have done to be permissible. Particularly with a view to the latter we speak of a 'clear' or 'clean' conscience. This does not as such amount to a positive sense of fulfilment or satisfaction because it satisfies none of our inclinations (that would conjure up the spectre of eudaimonism). We merely escape a negative verdict (pangs of conscience). But it may lead to a sense of moral or intellectual contentment (cf. Critique of Practical Reason AA V 118.1).

3. Pliny, *Epistulae* I, 18, 5. Kant mentions it in much the same spirit in a note on moral certainty (R 2504, 1790s); in the 1797 *Theodicy* essay, he calls it the 'material principle of conscientiousness' (AA VIII 268.7); and in Powalski's moral philosophy notes, probability and certainty are discussed as features of *rules* (AA XXVII 127.33–128.16). On the context of the quotation see Werner Pluhar's note (I. Kant, *Religion within the Bounds of Bare Reason*, trans. W. Pluhar, Indianapolis, Hackett, 2009, p. 206).

opinion that an action may well be right is sufficient to make it permissible. He associates probabilism with the teachings of the Jesuits.<sup>4</sup>

Accordingly, one prominent task of conscience is that of relating abstract and general commands of reason to our own intended actions with a view to their permissibility:

Whether an action in general is right or wrong [*recht oder unrecht*] is judged by the understanding, not by conscience. And it is not absolutely necessary to know of all possible actions whether they are right or wrong. But with respect to the action that I want to undertake I must not only judge, and be of the opinion, but also be certain that it is not wrong [...]" (AA VI 185.23–186.6)

The idea that there is something fundamentally first-personal about conscience – which cannot be said of the moral law as such – is borne out by Kant's casual remarks elsewhere, e.g. in the *Groundwork's* second illustration of the categorical imperative. There the agent, Kant says, "still has enough conscience to ask himself: is it not impermissible and contrary to duty to help oneself out of need in such a way?" (to obtain a loan by means of a false promise, AA IV 422.19–20).<sup>5</sup> Moreover, conscience is declared a precondition of all duties in the Doctrine of Virtue (at AA VI 406.34–407.1, cf. AA VI 400.21–401.21) – the moral law would be nothing to us if it remained wholly detached from our practical concerns. We learn from Johann Friedrich Vigilantius' notes on Kant's lectures on the metaphysics of morals that, to this end, conscience makes us investigate matters of fact, i.e. we need to ascertain that our opinion that an act is permissible is actually justified.<sup>6</sup> Conscience connects moral rules with the acting self. It is practical apperception.

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4. We know this from a note jotted down at around the time the book was published (R 2632) and from a discussion of probabilism in the Vigilantius lecture notes on the metaphysics of morals (XXVII 622.31–36). Jesuits did indeed defend several different versions of probabilism, including a very permissive version that required support from one authority (against overwhelming advice from others). The historical manifestations of probabilism and Kant's connections with them fall outside the scope of this paper. For a concise overview see Pluhar, *op. cit.*, p. 206. The *Quod dubitas* principle is mentioned (and probabilism rejected) very early on: R 6955 (1770s): "All moral laws must be certain. Subsumptions can be probable. Probabilism with regard to what is permitted is evil." Cf. also R 6303 and R 6549, which emphasises the necessity of legal permissibility (*Rechtmäßigkeit*). Both date back to the same period. The rejection of probabilism is a constant in Kant's ethical thought from (at least) the 1770s. On the moral dangers of probabilism see R 7180 and Collins, AA XXVII 359.19–23. Also, Kant takes issue with Baumgarten's definition of probabilism (*Ethica*, § 193) in Vigilantius, XXVII 622.24–30.

5. So, here conscience speaks up against inclination, not against the teachings of revealed religion.

6. In Vigilantius, Kant similarly says that the judgement of conscience concerns a *factum* (a deed? matters of fact that would, in conjunction with a law, justify a deed?). We have, Vigilantius tells us, a duty to investigate the latter, called 'circumstances' (*Umstände*), whereas the judgement of the understanding relates to a general proposition (AA XXVII 614.31–32). Kant probably takes his cue from Baumgarten's theory of a court or *forum*, see *Initia*, §§ 181–185.

§ 2.

Now, the point of clarification that needs to be made explicit is this.<sup>7</sup> In its capacity as a guide, conscience concerns itself solely with the *juridical permissibility* of a proposed action.<sup>8</sup> Kant's injunction not to do anything that runs the danger of being 'wrong', or always to make sure that what one does is 'right', is not about right and wrong in its general, modern ethical sense, in which it is said to be wrong not to help someone in need, i.e. to neglect a positive, ethical obligation of beneficence.<sup>9</sup> Kant's principle of caution does not concern conformity or non-conformity with any kind of obligation that can be derived from the categorical imperative. Nor does it apply to choosing the right means to the moral or non-moral – let alone immoral – ends we pursue. Rather, the question raised and investigated by conscience concerns the danger of our violating strict duty, of infringing upon someone's rights.<sup>10</sup>

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7. None of the following authors discusses or even mentions the point: James DiCenso (*Kant's "Religion within the Boundaries of Mere Reason": A Commentary*, Cambridge, Cambridge University Press, 2012, pp. 237–242); Andrea Esser ("The Inner Court of Conscience, Moral Self-Knowledge, and the Proper Object of Duty (TL 6:437–444)", in A. Trampota, O. Sensen and J. Timmermann (edd.), *Kant's "Tugendlehre": A Comprehensive Commentary*, Berlin, De Gruyter, 2013, pp. 269–292); Katrin Flikschuh ("Gottesdienst als Afterdienst: Die Kirche als öffentliche Institution bei Kant", in O. Höffe (ed.) *Immanuel Kant: Die Religion innerhalb der Grenzen der bloßen Vernunft*, Berlin, Akademie Verlag, 2010, pp. 193–210, especially pp. 207–209); Dean Moyar ("Unstable Autonomy: Conscience and Judgment in Kant's Moral Philosophy", *Journal of Moral Philosophy* 5, 2008, pp. 327–360); Stephen Palmquist (*Comprehensive Commentary on Kant's Religion within the Bounds of Bare Reason*, Chichester, Wiley Blackwell, 2015, pp. 464–476); Lawrence Pasternack (*Routledge Philosophy Guidebook to Kant on Religion within the Boundaries of Mere Reason*, London and New York, Routledge, 2014, pp. 230–232); Dieter Schönecker and Elke Schmidt ("Kants Philosophie des Gewissens – Skizze für eine kommentarische Interpretation", in M. Egger (ed.), *Philosophie Nach Kant: Neue Wege Zum Verständnis von Kants Transzendental-Und Moralphilosophie*, Berlin and Boston, De Gruyter, 2014, pp. 279–312); Allen W. Wood (*Kantian Ethics*, Cambridge, Cambridge University Press, 2008, pp. 182–192). Regrettably, my own earlier discussion of conscience is no exception (J. Timmermann, "Kant on Conscience, 'Indirect' Duty, and Moral Error", *International Philosophical Quarterly* 46, 2006, pp. 293–308). The point will not have eluded some of these interpreters, particularly those who work with the German text; but the fact remains that it is never explicitly stated. Speaking of 'just' and 'unjust' – rather than 'right' and 'wrong' – actions, G. Felicitas Munzel comes closest to putting her finger on it (*Kant's Conception of Moral Character: The "Critical" Link of Morality, Anthropology, and Reflective Judgment*, Chicago, University of Chicago Press, 1999, p. 221, and "What Does His Religion Contribute to Kant's Conception of Practical Reason?", in G. E. Michalson (ed.), *Kant's "Religion within the Boundaries of Mere Reason": A Critical Guide*, Cambridge, Cambridge University Press, 2014, pp. 214–232, especially pp. 230–232). But she does not explain her choice of words.

8. Similarly, Vigilantius tells us to ascertain the legality (*Rechtmäßigkeit*) of an action, cf. AA XXVII 616.7.

9. The restricted scope of conscience is much clearer in the original than in (English) translation. The words rendered 'right' and 'wrong' by both Werner Pluhar and George di Giovanni are *recht* and *unrecht*, not *richtig* and *falsch*. It does not help that di Giovanni removes the double negation at AA VI 186.6: "With respect to the action that I want to undertake, however, I must not only judge, and be of the opinion, that it is right [daß sie nicht unrecht sei]; I must also be certain that it is." (I. Kant, *Religion and Rational Theology*, trans. A. W. Wood and G. Di Giovanni, Cambridge, Cambridge University Press, 1996, p. 203).

10. Kant's examples tend to focus on strict, juridical duties to others: not to destroy innocent life, not to deprive them of what is theirs etc. Is the voice of conscience silent when one is about to violate laws of strict duty to oneself? Moreover, it is worth remembering that it is a matter of strict duty to adopt the ends of others as one's own, i.e. it is impermissible (wrong) not to adopt a maxim of helpfulness. (This is a duty antecedent to and distinct from any particular obligation to help.) If so, conscience may well, indirectly, have something to say about imperfect obligations after all.

This restriction of the scope of conscience tallies with the metaphor of conscience as a court of law.<sup>11</sup> What is more, both illustrations mentioned by Kant himself concern strict duties of right. Abraham<sup>12</sup> and the inquisitor<sup>13</sup> would wrong someone (violate someone's rights) were they to kill a human being on the basis of their faith. In Kant's mind, the prohibitions of strict duty are so clear that no evidence can be made to bear against them.<sup>14</sup> This is something the voice of conscience can teach us, if only we are prepared to listen. There can be no doubt that it is impermissible to take the life of an innocent person. Whenever we explore the question whether killing an innocent human being is permissible some suspicion will remain.<sup>15</sup> Neither historical<sup>16</sup> nor direct revelation can ever establish beyond reasonable doubt that it would be right to do so. Conscience will not fall silent.<sup>17</sup>

### § 3.

It clearly makes a huge difference whether 'right' and 'wrong' are taken in the wide or in the narrow sense of these words. With the restriction of scope in place, Kant's thesis that we should let conscience be the guide to serious moral questions rests on two assumptions that, though expressions of Enlightenment optimism, are not wholly unreasonable. The first is that we know whether we have examined the question of permissibility to our own, subjective satisfaction. The second assumption – by now familiar – is that in some cases we never will, i.e. that there will, in those cases, always be lingering doubts as to whether an action is 'right' in the juridical sense. There are three possible results. Either we come to the wholehearted conclusion that an action is permissible, i.e. that it does not

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11. This includes strict duties to others that cannot be enforced, e.g. questions of equity, which Kant explicitly refers to the 'court of conscience' (AA VI 235.9). Accordingly, violations of the demands of equity result in a bad or guilty conscience.

12. Abraham was told by God that he should slaughter his son Isaac like a lamb, AA VI 187.4–10; cf. Genesis 22, 1–2.

13. The inquisitor faces the question whether he is allowed to condemn a heretic to death, AA VI 186.23. He is named as Thomas of Torquemada, the first Grand Inquisitor of the Spanish Inquisition, in Vigilantius' lecture notes (cf. AA XXVII 615.28).

14. The plausibility of the idea that conscience can serve as a guide may depend on the *negative* character of laws of perfect duty, which are not supposed to conflict with each other (cf. J. Timmermann, "Kantian Dilemmas? Moral Conflict in Kant's Ethical Theory", *Archiv für Geschichte der Philosophie* 95, 2013, pp. 36–64).

15. Isaac is clearly innocent; and the inquisitor finds fault with the heretic on religious grounds. The latter has not broken the just laws of the state, he is a "good citizen" (AA VI 186.23–24). Otherwise he might, in Kant's view, deserve to die, though it seems questionable that it would be right for the inquisitor, in that capacity, to convict and sentence him. Of course, an actual judge or a jury might well be in doubt as to whether someone accused of a capital offence is actually guilty. It follows from Kant's principle that they have to return a verdict of 'not proven' (where this option exists) or 'not guilty'.

16. The conscientious examination of all relevant facts can never substantiate the position of Roman Catholicism in the late fifteenth century, that someone should be put to death on account of his heretical beliefs. Revelation is uncertain, as are human exegetical endeavours. By contrast, the principle that no innocent person must be put to death is apodictically certain.

17. In keeping with the target of probabilism, the guiding role of conscience concerns practical conflicts between church doctrine, which is based on the interpretation of historical documents, and the morality of pure reason. But Kant himself extends it to an imaginary case of a conflict of morality with direct revelation (the case of Abraham and Isaac). The guiding capacity of conscience appears to be perfectly general. It can be used to test action based on any kind of conviction, authority, ideology or personal inclination that can clash with the commands of the categorical imperative.

violate the rights of the person affected; or we reach the wholehearted conclusion that the action is impermissible; or we do not reach a wholehearted conclusion, i.e. we may have a firm belief, or come to a conclusion, but doubts will linger. We must refrain from the act in the third case, as in the second. And we can be aware of this, no matter whether my understanding, relying on Church or positive law, comes to a different conclusion (a conclusion that is still exposed to doubt). It is this certainty in matters of strict duty (to others) that allows Kant to say that the Doctrine of Right does not need either casuistry or a doctrine of method (see AA VI 411.2–9).

Without this restriction, the principle not to do anything that might be wrong (or not right) is totally unconvincing. We would be paralysed by doubt. How could we ever be allowed to do anything? Take, first, ‘right’ and ‘wrong’ in the general ethical sense, which comprises actions in accordance with or contrary to any kind of duty. According to the *Groundwork*, it is our duty to be beneficent where we can (IV 398.8). But the needs of others constitute many, often conflicting claims. Ethical training is needed to help us decide. There are rules of thumb to the effect that urgent cases, those who are near and dear etc. should be given priority, but it is difficult to see how our opinion that we ought to help a particular person can ever be free from lingering doubts.

Things get even worse if we include the instrumentalist sense of ‘right’ and ‘wrong’. Assume that, in some specific case, we come to the wholehearted moral judgement that we ought to rescue a person in need, say a friend of ours who is drowning. This is the right thing to do. This does not mean that we are clear about the means needed to save the friend. We may well be uncertain as to whether we should call the coast guard, inform an Olympic swimmer who is now our colleague or quickly jump in to rescue the friend ourselves. The principle of *quod dubitas, ne feceris* would condemn us to inaction, which cannot be right.<sup>18</sup>

In sum, the significance of the use of ‘right’ and ‘wrong’ in Kant’s theory of conscience extends far beyond textual fidelity. The philosophical plausibility of the idea that conscience can serve as a guide stands and falls with it.<sup>19</sup>

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18. In an early note (R 2462, dating from the 1770s), Kant seems to suggest that different degrees of certainty apply to different practical spheres. Mere belief can – and in many cases must – be the basis for prudential action, but it does not suffice to settle cases of juridical doubt.

19. This short paper is based on my comments on Claudio La Rocca’s Mary Gregor Lecture “Kant and the Problem of Conscience”, read at the meeting of the Central Division of the American Philosophical Association in Chicago on 3 March 2016 and now published in *Contemporary Studies in Kantian Philosophy*, vol. I (2016), 65–79. I am indebted to Pablo Muchnik for his invitation to undertake this task. I should also like to thank Yoon Choi, Jeanine Grenberg, Claudio La Rocca and my wife, Kate Moran, for comments on an earlier version of this paper.