

Private and Public Conscience^{*}

(Or, Is the Sanctity of Conscience a Liberal Commitment or an Anarchical Fallacy?)

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1 CONSCIENCE AND PUBLIC AUTHORITY: HILL'S MODERATION OF HOBBS

Thomas Hill alerts us to the persistent problem of the relation of conscience to the dictates of authority.¹ A traditional view is that one should always follow one's conscience. "In favor of conscience," Hill notes, "some argue that we lack moral integrity if we violate our conscientious convictions just because someone told us to" (CA: 260). But if this is so, then it seems that a person of moral integrity cannot acknowledge the authority of others to make decisions for her — at least not on moral matters. She must always act as she thinks best. Hobbes saw this as a poisonous and seditious doctrine, corrosive to the commonwealth.

For a man's conscience and his judgment is the same thing; and as the judgment, so also the conscience may be erroneous. Therefore, though he that is subject to no civil 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 Commonwealth, because the law is the *public 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 Commonwealth must needs be distracted, and no man dare to obey the sovereign power farther than it shall seem good in his own eyes.²

Because there is moral disagreement — our moral judgments, and so the dictates of our consciences differ — those who insist on always acting on their "private consciences" are enemies of social order. We should be guided by the "public conscience" of the law.

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In two important and insightful essays on conscience,³ Hill develops a Kantian conception of conscience that concurs with three of Hobbes's core claims: (i) that conscience is intimately tied to judgment, and (ii) that because our judgment can be mistaken, conscience may be erroneous (CA: 272). And, importantly, Hill concurs with Hobbes's core claim (iii) that the doctrine that one should always follow one's "private" conscience undermines public authority, and leads to disasters. After the horrors of the twentieth century, however, we cannot be as sanguine as Hobbes about eliminating reliance on "private conscience."⁴ Hill seems to offer a way out: both conscience and public authority are to be respected but both are fallible. Sometimes we should follow one, sometimes the other (CA: 272-3). Thus Hill seeks to avoid both extremes, the deification of private conscience and the Hobbesian supplanting of private conscience with public authority.

In this essay I examine Hill's analysis of conscience, and embrace his thesis that the Kantian conception is to be preferred to the competitors he considers. On my reading, his account of Kantian conscience is open to two interpretations, the personal and the inclusive. Hill's ultimate position on the relation of conscience and public authority, I maintain, presupposes the personal interpretation, but the inclusive interpretation is far superior. The inclusive interpretation, however, leads to precisely the doctrine that both Hobbes and Hill oppose — that a moral agent should always follow her conscience. In the final sections of this essay I sketch an analysis that seeks to show why, *pace* Hobbes and Hill, this understanding of the sanctity of conscience is not inimical to public authority, even public authority about the dictates of morality.

2 THREE CONCEPTIONS OF CONSCIENCE

2.1 The Religious Conception

Hill's method in these two essays is to contrast different conceptions of conscience, showing how the competitors to the Kantian view go astray.⁵ The first is what Hill deems a "popular religious conception" according to which conscience is a "God-given instinctual access to moral truth" (FCC: 17). Hill focuses on an extreme version

of this view characterized by six theses (FCC: 17-18). (i) Every human is born with a capacity for conscience, which is the ability to identify morally permissible and impermissible motives, intentions, acts and aims. (ii) Certain acts are objectively morally wrong, independently of our consciences; if our conscience persuades us they are wrong and we nevertheless perform the act, we have done the additional wrong of acting against our conscience. (iii) Conscience speaks to us authoritatively: we do not view its dictates as advice. Violation incurs guilt and painful feelings. (iv) Conscience is a gift from God that makes moral truth accessible to us, and its authority stems from the fact that its dictates are part of God's will. (v) Conscience is not primarily a matter of rational judgment as much as an "instinct governed internal 'voice'" (FCC: 18). (vi) "Once we have correctly identified and heard its 'voice,' conscience is a reliable source of knowledge of our moral responsibilities" (FCC: 18). On some views conscience is infallible, though we still might make mistakes in interpreting it.

The popular view apparently grounds the sanctity of private conscience; it is a God-given gift that allows access to the moral truth, and we commit a moral wrong to disregard it. However, Hill suggests that the wide gulf it posits between rational judgment and conscience undermines the apparent infallible authority of conscience. Even if I am clearly "told" to perform some act, unless I form a sound judgment based on moral reasons why it is to be done, I cannot be certain that the voice I am hearing is really that of conscience, as opposed to some less reputable instinctive urging such as self-interest, masquerading as conscience (CA: 265). Thus insofar as it truly is an instinctual voice divorced from reason and reflection, the authority of our inner vice is undermined, for apart from judgment we cannot be sure that the voice is really that of conscience. Moreover, when another confronts us with a claim that her conscience demands that she must perform (or refrain from) some act, unless our inner voice confirms her claim, the soundness of her report to act on conscience must remain opaque to us. She is reporting an "instinctual" reaction; if we do not share it we have no grounds for supposing that it is properly her conscience that is instructing her rather than, say, self-interest or simply a dulled sense of right and

wrong (FCC: 20). Thus the ground for respecting the differing consciences of others is undermined, and thus also the social basis for recognizing the sanctity of conscience.

2.2 Cultural Relativism

An important aspect of Hill's analysis is that in both essays he confronts what calls the "cultural relativistic" analysis of conscience. The extreme version of this view advances two theses: "(1) a widely accepted causal explanation of the genesis and social function of the feelings ascribed to 'conscience' and (2) the controversial philosophic thesis that what is called *conscience* is not, even in the best case, a mode of access to moral truth, knowledge, or objectively justifiable beliefs" (FCC: 22, emphasis in original). I am skeptical that that these theses imply, or are even consistent with, cultural relativism understood as an account of morality; there is certainly nothing in cultural relativism that must deny that conscience involves access to moral truth, or refers to moral judgments with truth conditions, so long as this truth is indexed to contextual (i.e., cultural) facts.⁶ As I understand him, Hill is actually concerned with a certain sort of social scientific debunking view, according to which after we have done our moral psychology and understood the role of conscience in upholding social norms, there is nothing left to say.

Hill quite rightly objects that we cannot fully understand the idea of acting from conscience divorced from some notion of what morality requires. He considers the case of Himmler. In the secret Posen speeches in 1943 in which Himmler laid out agenda for the Holocaust to Nazi leaders, he proclaimed the "sentence: 'The Jews must be exterminated.'" Himmler adds "what the sentence demands of the man who must execute it is the hardest and toughest in existence."⁷ This hardness required that the executioners steel themselves against pity and sympathy in carrying out their extermination of an entire race, including women and children.⁸ Even if one concluded that this was in accord with the norms of the Nazi Germany,⁹ we cannot say that "Himmler's conscience" instructed him to ignore feelings of pity and sympathy to carry out this "hard" task. "If, as I suspect," Hill

writes, “Himmler’s norms were fundamentally vicious, self-serving, and subversive of morality, then any bad feelings he may have had when thinking about violating them do not deserve to be called *pangs of conscience* in the usual (partially laudatory) sense” (FCC: 26, emphasis in original). This is not to say, Hill adds, that it is incoherent for me to say of another that his conscience instructs him to do what I believe is morally wrong. We need to distinguish the immoral from the “grossly immoral” (FCC: 27). If I can see your action as moved by an intelligible or reasonable conception of morality, I can employ the laudatory sense of conscience even though I believe your action is immoral. However, at some point what a person calls “moral” is beyond the pale, and then I might say “it was false (corrupt, not genuine) conscience that told him to do that” (FCC: 27).

Note that Hill’s argument is directed against the second claim of the “cultural relativist” conception, i.e., that “what is called *conscience* is not, even in the best case, a mode of access to moral truth, knowledge, or objectively justifiable beliefs.” However, Hill insists, Kantians need not reject all the elements of this empirical conception (FCC: 24). “Contemporary Kantians who reject certain aspects of Kant’s metaphysics,” Hill writes, “should expect that the development of conscience can be explained empirically, and, in my opinion, there is no need to deny that conscience requires certain cultural contexts in which to develop” (FCC: 44). As I read him, Hill accepts that an adequate conception of conscience must be in accordance with empirical findings in moral psychology and social theory, including the ways that conscience helps “secure a measure of conformity to ... local standards without entirely relying on external rewards and punishments” (CA: 266). Let us call this the desideratum that a conception account for *conscience’s role in supporting social norms*.

2.3 The Kantian Conception

Hill describes Kant’s conception of conscience as “judicial self-appraisal” (FCC: 31). On the Kantian conception conscience is distinct from moral judgment — it is not an instinct or faculty for determining what is right and wrong, but comes “into play only after one has made, or accepted, a moral judgment” (FCC: 31).

Conscience is an involuntary response to the recognition that what we have done, are doing, or are about to do is contrary to the moral judgment that we have made (by applying the moral law to different types of circumstances). Prominent among the many moral judgments that a person of conscience will have made is that they have the special, second-order duty to submit their acts to the “inner court” of conscience, scrutinizing them diligently, impartially, and sincerely. Once they submit their acts to appraisal, conscience gives its verdict and [as Kant says] “passes sentence” automatically, for this is just a metaphor for the painful awareness of wrongdoing that such sincere appraisal causes in a person with the basic disposition of “practical reason” [W]e can say that conscience can acquit or condemn with regard to accusations of both violations of first-order duties (e.g., truth telling) and failures to fulfill second-order duties of due care in scrutinizing and appraising our acts diligently... (FCC: 34-35).

Conscience, then, is not a type of instinct or intuition, but a monitoring of our first-order judgments, a determination as to whether we have fulfilled our second-order duty of due care and whether our actions conform to our considered judgments. Consequently, Hill claims that “[a] clear conscience is no guarantee that we have acted in an objectively right way, and so it is no ground for self-righteous pride *or presumption that our moral judgment is superior to those who conscientiously disagree*” (FCC: 35, emphasis added). A clear conscience is an indication that one has done one’s best — or at least all that can be expected of one — in forming judgments and acting on them. Consequently, “[c]onformity to conscience is necessary and sufficient for morally blameless conduct, in Kant’s view, even though it cannot establish correctness” (FCC: 36).

On the Kantian conception “conscience is not a non-verbal signal, like a flashing light. The metaphor represents it as speaking to us, accusing, examining, and passing sentence, in a familiar moral vocabulary” (CA: 270). This inner court determines when we fail to act on our own internalized moral judgments (CA: 270). The “warning and the pangs of conscience” indicate to us that we could have done better in our deliberations and our actions — they “reflect our recognition that our conduct falls short of our own standards, they are a reliable sign that we are not

doing our best” (CA: 271). Like any court, conscience can be overly harsh and convict us of malfeasance even we have adequately fulfilled our duties. Hill’s insistence the pangs of conscience are not an immediate reaction like a flashing light indicates that they are more akin to judicial sentences or at least warnings: in our inner conversation we have concluded that we have failed to live up to our own standards. If our conscience clears an action, it is a reliable, though by no means infallible, indication that we have lived up to our own moral standards (CA: 271); whether or not we have actually done so is a matter of fact, not a matter of our beliefs about that fact. To act with a clear conscience reflects an inner judgment that we have discharged our duty of due care in our moral deliberation; we have adjudged ourselves to have faultlessly arrived at our decision. This is not to say that we are correct, but that we have been acquitted by our inner court of faulty deliberations.

Although, in contrast to what Hill described as the traditional religious view, conscience is not an infallible voice, if a judgment is, as it were, cleared by one’s conscience, it is nevertheless as “reliable a subjective guide as we [one] can get” (FCC: 36). It is, we might say, our best imperfect procedure for arriving at moral decisions, though of course we may be wrong.¹⁰ Recognizing that the conscience of each is fallible, Hill argues that the Kantian conception insists that conscience must be “checked by public, reason-governed, critical discussion of the standards that our consciences habitually rely upon” (CA: 272).

The upshot is that...conscience does not determine what it is objectively right to do. Under the best interpretation it must be respected, for its judgments are reliable, within their limits. But given this view, conscience is never sufficient by itself: only engaging in explicit moral reasoning, with others, enables us to live with a reasonable hope that our moral beliefs are justified. Ironically, assuming the “duty of care,” we cannot even have a *clear* conscience unless we are willing to check the opinions that our consciences rely upon by engaging in this process of moral reasoning (CA: 272).

There is, as I read it, a fundamental ambiguity in this passage *between a personal (or private) and an inclusive (or public) interpretation of the demands of conscience*. On the *personal* interpretation, conscience is akin to a rationalized, judicial, internal voice or faculty that concerns only whether one's personal reasoning, given one's own internalized norms and convictions, is adequate. "The general function of conscience is to alert us when we are not doing our best to live up to *our own* moral standards" (CA: 269, emphasis added). It makes perfect sense to say that I check this "personal judgment conscience" by engaging in a sort of public reason — comparing it to others' private judgments to determine whether I have made a deliberative error or based my reasoning on flawed norms and values.

However, insofar as conscience is an internal judge that determines whether one has exercised "due care" in forming one's judgment, conscience itself would appear to demand that one takes an inclusive view of the relevant evidence and considerations, and so the demands of conscience drive one to public engagement. The exercise of due care drives us from merely personal deliberation about our own norms and values to public engagement. Conscience itself demands that one's personal judgment be publicly checked. After all, how could conscience give a verdict that one has exercised due care when one has not checked one's deliberations in this way? But if so, then it is only one's initial, personal, moral *judgment*, not *conscience*, that is being checked by public engagement. It is perplexing that Hill thinks that it is "ironic" that we cannot even have a clear conscience unless we check our opinions through public moral reasoning; this would only be ironic if conscience was essentially a faculty or a judgment based only on personal norms, and that such a conscience needed to be checked by others' reasoning. But there is nothing remotely ironic about an internal judge, insisting on due care, requiring that a conscientiously formed opinion must take an inclusive view of the relevant considerations and so confront public reasoning. Indeed, this is essentially a Millian response to fallibility. As Mill pointed out in *On Liberty*, given the fallibility of one's judgment, in order to arrive at adequately grounded beliefs one must confront those who disagree.¹¹ On Mill's view this is part of a good epistemic practice that is

required for adequate justification of one's beliefs; on the Kantian interpretation it would seem part of the due care that conscience itself demands. Unless conscience demands this wider "checking" it would simply be false that it is as "reliable a subjective guide as we can get" (FCC: 36). Rather than saying that "conscience must be checked by public reasoning and exchange," it seems far more accurate to say "the Kantian conscience demands that initial personal moral judgments be so checked." It thus seems that the inclusive or public interpretation of the demands of conscience is favored by the "due care" reading of the Kantian conception.

3 THE CONFLICT BETWEEN CONSCIENCE AND AUTHORITY:

THE VIEW OF THE DISSENTER

3.1 The Conflict and Hill's Response

Hill asks: "What if conscience conflicts with the direct commands of those who have authority over us?" (CA: 260). To make the question more precise, suppose that Alf's country is prosecuting a war that he deems immoral; the duly constituted majority, employing the apparatus of the state, has decided in favor of the war, and calls on Alf to support it, either through taxation or more specific measures, such as being a combatant. Alf believes that the war is wrong, and his conscience verifies this. What is he to do?

Hill's invokes the Kantian account of conscience: even after Alf has concluded with due care that the war is immoral, he must recognize that he could be wrong. In contrast to what Hill called the religious conception, Alf cannot claim that his conscience is infallible. Moreover, Hill insists that it is not just some "other people," but a constituted political authority, that is commanding Alf.

To acknowledge that they are authorities is to recognize that there are *good reasons* for them, rather than us, to have the right to make certain decisions. To ignore this crucial point can be disastrous, especially in times of crisis that call for immediate action. Even in the absence of crisis, when we have ample time to reflect, the need for authoritative decisions to coordinate group activities is vitally important factor that our deliberations, *and even consciences, should take into account* (CA: 260, emphasis added)

One might think, then, that given the possibly “disastrous” outcomes of ignoring political authority, we should take a Hobbesian route and always defer to public authority. Hill refuses to take this radical route. Recall (§2.2) that conscience has an ineliminable moral dimension and is not simply a tool for social order; there must, Hill reasons, be times when one cannot defy one’s personal moral judgments —“for example, where to obey would be plainly a crime against humanity” (CA: 261). Hill’s example here is radical, citing the Nuremberg trials (CA: 261), suggesting perhaps that in a very wide range of normal cases deference to authority is appropriate. In any event, Hill concludes:

Regarding the conflict between conscience and authority, my theme has been a modest one: both should be respected, but neither is an infallible moral guide; and if we cannot satisfy both, there is a need, time permitting, to look for a resolution in a process of moral reasoning. In this process we survey the facts of the case, crucially examine relevant arguments, and listen to diverse opinions, *considering all of this from a moral point of view* (CA: 272-3. emphasis added).

3.2 The Inclusive View and the Mirage of Conflict

Because Hill’s account of conscience is open to two interpretations (§2.3), so is his doctrine about the relation of conscience and authority. Turning first to the *inclusive conscience interpretation*, it would seem to imply that the individual conscience should always take into account the arguments for, and claims of, authority; Hill is clear that this is part of the morally relevant features of the act from the “moral point of view” (CA: 273). Due care requires that Alf take up the moral case for doing as the authority dictates; as Hill says, “the need for authoritative decisions to coordinate group activities is vitally important factor that our deliberations, and even consciences, should take into account” (CA: 260). If, after Alf takes up the more inclusive view, his conscience still does not approve (that is, his initial personal moral judgment stands after due care has been exercised), then he should conclude that the directives of the political authority provide him with insufficient reason to

obey. On this interpretation, once Alf considers the entire problem inclusively from the moral point of view, his conscience will announce which is the correct judgment arrived at with due care — whether to follow his initial personal moral deliberations about the justice of the war or do what the public authority directs. He then should follow this judgment. This interpretation reconciles Hill's claims (i) that one's conscience should consider the importance of public decision-making authority and (ii) that one's conscience is the best subjective guide to moral right and wrong one has. And, after all, one can only act on the basis of the best reasons as one sees them.

However, if this is the proper interpretation, the conflict between the claims of conscience and public authority is ultimately illusory, for the original personal moral judgment was only, as it were, a judgment of the first look, before Alf had fulfilled the requirements of due care. After due care, when Alf considers the problem inclusively from the moral point of view and engages with the opposing views of others and the case for political decision making, he cannot conclude that there is an ultimate conflict between the pull of conscience and moral reasons to follow authority. Either, given all the inclusive considerations relevant from the moral point of view (including the moral goods of collective action, and taking into account that after all one's personal judgment could be wrong), Alf's conscience approves of the political directive, or else he concludes that the authority's directives are defeated as reasons for him. In either case, at the end of the day the conflict is resolved in favor of one or the other and his conscience approves of the result arrived at with due care. So the inclusive view of conscience in no way denies that one should always follow one's conscience. To be sure, it insists on a more inclusive view of what should be considered in political contexts: this should include the good of collective action conjoined with a lively recognition that one's own deliberations might be wrong, so one should give weight to the collective conclusions. As Hill acknowledges, all of these are relevant considerations from the moral point of view (CA: 273).

It is important, I think, that appreciating the fallibility of conscience does not undermine this conclusion. Mill provides a case that recognizing one's fallibility

should lead one to adopt certain attitudes towards inclusive engagement with others so as to arrive at the best justified beliefs. And one should embrace a continuing engagement as one recognizes the revisability of one's judgments in light of further deliberation and evidence. However, having accepted all of this, having done one's best to exercise due care in forming one's beliefs and taking account of the claims of political authority, then one has no reason to further defer to the authority of the public on the grounds that one might be wrong. One has already, as it were, factored all that into one's conscientious judgment through the duty of due care, which is what conscience demands. It thus seems that on the inclusive interpretation of the Kantian conception one should, *pace* Hill, always follow one's conscience. From the view of the dissenter, there really is no deep conflict: he should always follow his conscience.¹²

3.3 The Personal Conscience Interpretation and the Problem of Social Norms

On the personal conscience interpretation, Alf's conscience requires reflection on his personal, internalized, moral convictions; while sometimes it may take account of the claims of public authority, conscience's due care requirement does not demand such an inclusive view of the problem. Under this conception, a person might genuinely check his *conscience* by consulting public deliberation or the directives of public authority. Here it seems that we must distinguish what Alf's conscience directs from what he has most moral reason to do (i.e., what is ultimately approved of from the moral point of view). Recognizing that his personal moral reasoning on the basis of internalized rules is fallible, and so even after he has fulfilled his conscience's demand of due care that he may be wrong, Alf sometimes will see that he should defer to the public authority rather than his conscience. This interpretation accords with Hill's "modest" conclusion that both conscience and public authority "should be respected, but neither is an infallible moral guide" (CA: 272-3): it thus allows for a genuine conflict within Alf's moral consciousness between the demands of a public legitimate authority and his conscience, so that sometimes as a good citizen he will act against his conscience. On this view, as a citizen Alf should see

both that he has strong moral reasons to act on his conscientious moral judgments while also appreciating that he has strong moral reasons (reasons from “the moral point of view”) to obey the state. But even if he concludes that he should obey the state in this case, this still would go against his conscience because, thinking about things as deeply as he can, he has concluded the state’s command is wrong. Alf is in the somewhat paradoxical situation of having moral reasons to do what he conscientiously believes to be wrong.

As I have said (§2.3), this interpretation seems more appropriate for a view that sees conscience as a personal faculty of moral judgment — as an automatic “flashing light” — rather than, as in Hill’s Kantian view, a monitoring second-order judge that determines whether we have exercised due care in making moral judgments. At least on the Kantian view, the idea that there could be considerations from the moral point of view that are outside the purview of conscience seems puzzling.

A less obvious problem also confronts this interpretation. As we saw in section 2.2, Hill embraces conscience’s role in supporting social norms — that conscience, by internalizing social norms, helps ensure compliance via guilt and other reactive attitudes. And Hill certainly seems right to embrace this. Good evidence and compelling social scientific models indicate that social norms that are not moralized — that are not internalized and induce feelings of guilt for noncompliance and resentment and indignation when their violation by others is observed — are ineffective.¹³ Now social norms are best viewed as a type of public authority. To be sure, they are not typically based on a political authority that issues explicit directives, but they are social mechanisms that instruct individuals to act in a certain uniform way even if on the grounds of their personal deliberations this is not the best way to act. A social norm confronts Alf much as does a political directive: it says “Perform action ϕ in circumstances C (regardless of whether you think that is the best thing to do).” Even if on Alf’s view there is a better norm of, say, personal privacy, if he endorses the existing social norm he will typically feel guilt for violating it. For Alf to experience guilt at the violation of a social norm, he must

internalize it,¹⁴ thus functioning social norms require that Alf internalize the dictates of public authority — he must draw them *within the ambit of his conscience*.

For example, suppose that inspired by John Stuart Mill Alf does not think it is best if a person's voting behavior is considered private; he thinks it would be better if people were challenged about their votes and defended them. Nevertheless, if Alf accepts the current norm he will not challenge others in this way or criticize them for failing to divulge their votes, and he will feel rude for pressing hard to get them to reveal how they voted. If, however, conscience is really simply about one's personal commitments and not an inclusive evaluation of the act and the internalization of the necessary public authoritative directives, then we cannot expect such social normative guidance to come under the evaluation of his conscience. But if that is so, then we cannot expect conscience to be the enforcer of such norms — the voice of public authority — and without that we cannot explain conscience's role in supporting social norms.¹⁵

The same sort of inclusive conscience extends to the internalization of legitimate legal directives. Given the great goods secured by a political framework for social order, the Kantian maintains that we have a duty to embrace the norm of fidelity to legitimate law, and so its violation can induce guilt. Just as social norms without moral internalization are ineffective, so too with the legal order. To the extent that the moral point of view requires acceptance of legal authority over some matters, the moral point of view itself recommends the internalization of the authority's directives, and so their inclusion in the jurisdiction of conscience.

3.4 Avoiding Fanaticism: Abandoning the Personal Optimizing View of Morality

It is hard not to conclude that the Kantian conception of conscience must endorse the inclusive, public, view. Not only does the overall idea of conscience as due care in making moral judgment clearly incline in that direction, but it also seems necessary to account for the role of conscience in upholding social norms and the law. Given that the inclusive conscience takes account of all that is relevant from the moral point of view, it follows that, after all, one should always obey one's conscience, a

claim that Hill set out to deny (CA: 261). Like Hobbes, Hill appears to see this insistence on the sanctity of conscience as threatening fanaticism: based on my inner voice, I refuse to abide by public authority. But the only way for Hill to deny that a moral person always follows her conscience is to accept the personal interpretation of conscience, which I have tried to show is problematic on several grounds.

On the inclusive, public, view of conscience, one's internal judge only will approve of one's moral judgment as exercising due care if one takes account not only one's own personal deliberations about what moral standards are best (let us call this the *personal optimizing perspective*), but also considers the conflicting views of others and the moral importance of coordinated action and common social norms and law. To be sure, some philosophers identify moral thinking with an optimizing perspective: thinking through the issue on his own from the moral point of view, Alf decides what is the best rule, or best principle, and *that* is what morality requires, and so what his conscience dictates.¹⁶ But this seems far too narrow. On the inclusive view, Alf must recognize that he is fallible, and that there are reasonable others who often have come to different conclusions. Hill is entirely correct that a plausible Kantian view must take reasonable moral disagreement seriously. Thus due care requires that Alf engage them in public discussion. More than that, however, acknowledging the case from the moral point of view for common action and shared norms, he has moral reasons to deny that his personal view about the optimal rules or principles is determinative of his final conclusion about what is demanded by morality; insisting on the conclusions of his personal optimizing perspective often will prevent Alf from embracing common moral norms, and the requirements of common political action as moral requirements. Thus in a world of reasonable moral disagreement, the inclusive conscience requires that Alf often modify the conclusions of personal optimization deliberation and accept as genuinely moral many common rules that, while falling short of what he judges to be optimal, are acceptable to him as well as reasonable others. In these cases, though, the authority of the public is verified by the authority of Alf's conscience, for his inclusive conscience goes outside his personal optimizing perspective to require that he

conform to the dictates of public authority. Of course at some point the moral case for common rules and action will not outweigh Alf's judgment that the rules or political action on offer are seriously wrong, and so then his conscience will instruct him to dissent from or otherwise oppose the directives of public authority. Recall here Hill's comments on crimes against humanity (§3.1), though there is no reason to think that the inclusive conscience need, as it were, to wait anything like that long before rejecting the claims of public authority. In any event, when Alf comes to this conclusion, the authority of his conscience has determined that the "public authority" is without moral authority. Thus it does seem, as Hill quotes Kant as saying, that one should never obey a command of the state to do what one thinks is wrong (FCC: 42).

4 THE CONFLICT BETWEEN CONSCIENCE AND AUTHORITY:

THE VIEW OF THE IMPOSER

4.1 The Ideal of Conscientious Engagement

Let us suppose that each of us has taken the proper inclusive, public, view, and each person's conclusions has been vindicated by the court of his conscience. Most moral philosophers, including Kant, have been much too sanguine that competent reasoners will converge in their moral beliefs. Hill concurs:

Kant, I think, had too much confidence that all who take up the moral perspectives would reach agreement on moral principles. But in the face of disagreement about matters of vital moral importance, it is clear that his theory implies that the best each of us can do is, first, to make our own moral judgments about what we can sincerely recommend as reasonable to others who will take up the moral legislative point of view and, then, after duly consulting with others and giving due weight to their concerns, to act according to these judgments faithfully but with humility (FCC: 37).

Consequently, Hill acknowledges, although this Kantian conception implies a certain respect for conscientious disagreement, it by no means bans "coercing someone against their conscience" (FCC: 37).

The respect for those whose disagree with us in matters of conscience implied by this Kantian conception is surprisingly close to the ideal of “conscientious engagement” advocated by the religious philosopher, Christopher J. Eberle. “[E]ach citizen,” on Eberle’s view, “ought to arrive at conclusions of *conscience* in a *conscientious* manner. A citizen who respects her compatriots won’t be satisfied with supporting coercive laws that she mere *takes* to be morally appropriate. She’ll do her level best to ensure that the coercive laws she supports *really are* morally appropriate.”¹⁷ This is essentially Kant’s notion of conscious as requiring “due care” in making one’s moral judgments. After ensuring this due care, Eberle holds that a citizen who respects her compatriots (i) will withhold support from any coercive proposal that cannot be conscientiously defended in this way. (ii) She will communicate with her fellows, and seek to explain to them her reasons for coercing them, as well as listen to their evaluations of her reasons, and seek to learn from their moral objections to the policies. (iii) She will seek, as far as she can, to provide them with reasons that can they accept for being coerced. “She will pursue public justification for her favored coercive policies.” Finally, (iv) she will not endorse any policy that on her view rests on a rationale that violates or denies the dignity of her compatriots.¹⁸

Of course Eberle’s account is not the religious view of conscience as described by Hill (§2.1); it insists that a sound claim to conscience requires that one be conscientious, and this implies that a claim to conscience involves genuine judgment and “rational justification.”¹⁹ But this, I think, shows how Hill’s contrast between the religious view and the Kantian account depended on a specific, and somewhat radical, version of the religious view, which divorced appeal to conscience from rational reflection. A sophisticated religious analysis such as Eberle’s relates private conscience and the imposition of coercive policies by the public in almost precisely the same way as does Kant’s. Once we reject the picture of the religious conscience as ruled by infallible voices that cannot be rationally reflected upon, we see that both Kant’s and a religious-friendly analysis such as Eberle’s allow that, after respectful engagement, the public may rightfully impose a line of conduct based on a view of

what is morally correct that violates the conscience of some citizens. Indeed, Eberle's ideal of conscientious engagement seems more respectful than the account Hill finds in Kant, since a necessary step (i.e., 3) in Eberle's account is the attempt to show that those being coerced have their own moral reasons to endorse the measure. On Eberle's analysis we should at least try to find such a justification, though failing to do so after a good faith (due diligence) effort does not make it wrong to go ahead with the policy. Certainly Kant's view as described by Hill is not more respectful of conscientious difference than the account developed by Eberle.

4.2 Fallibility Contrasted with Reasonable Disagreement

In my view, both Eberle's and Hill's analyses inadequately respond to the fact of deep reasonable moral disagreement, which is far stronger supposition than fallibility. In holding any belief with which a significant number disagree, the supposition of fallibility is appropriate. After all, infallibility — that we could not possibly be wrong — is an extraordinarily strong supposition. A reasonable scientist who advocates a Darwinian account of evolution should suppose she is fallible; before pressing, say, a school curriculum based on evolution, she should monitor her beliefs to ensure that she has taken due care in forming them, and has considered objections and so on. That, however, is hardly an insuperable — or even a very strong — barrier to her proceeding. In contrast, what Rawls calls the "burdens of judgment" applies to a wide range of our moral convictions.²⁰ Because moral issues are so complex, because there are multiple values that must be weighed and there is no clear way to weigh them, because the empirical evidence is uncertain and what we take as evidence is often dependent on our previous beliefs and values, we disagree about the proper answer. And even when we agree on a general principle, our reason leads us to disagree on its proper application or interpretation. In contrast to the evolutionary scientist, the question here is not simply about fallibility, but whether, given the limits of human reason, one can have enough confidence in these judgments to ground what Hill calls "the presumption that our moral judgment is superior to those who conscientiously disagree" (FCC: 35) — a

presumption that Hill himself denies. If, though, Hill denies that Betty is justified in presuming that her moral judgment is superior to the conscientious moral judgments of those who disagree, then on what moral grounds can she justify imposing her view of morality — requiring that Alf act on morality as she sees it rather than as his own conscience dictates? She cannot say that his conscience is too narrow a view, only taking account of his personal optimizing perspective and not the need for public coordination, for she admits that he has taken the inclusive view, and so has exercised due care in considering these wider demands. If she cannot say that her inclusive conscience is superior to Alf's (including on the need for coordinated action on this matter), then on what grounds does she claim moral authority over Alf such that he should follow hers, and not his own, conscience?

Most of us are not Kantians, so even the most thoughtful derivation that an act is required by the categorical imperative will not be endorsed as justificatory by the conscientious evaluation of other reasonable people, just as Eberle's conscientious moral judgments based on religious convictions will not be endorsed by many fully competent members of the moral community. If this is the world in which we find ourselves, the question arises as to what warrants Betty in insisting that the conclusions of her public conscience have authority that overrides the authority of Alf's own public conscience about what *he* is required to do. Should Betty (as I think she should) concede that she would indeed be asserting an unwarranted claim to superiority, this would not be demonstrating that she lacks the courage to act on her fully justified though fallible beliefs; she would be refusing to elevate her merely reasonable conscientious convictions into the required public standard for all. Hill is quite right: she ought not presume her public conscience is superior to Alf's. But if she cannot presume that, what warrants her in making Alf conform to it? On the other hand, if she is not warranted in imposing her view, doesn't this undermine the very possibility of political authority?

4.3 Hobbes's Choice

It may seem that we are being led along the path blazed by Robert Paul Wolff: in the end those claiming authority over others must run roughshod over some people's conscience. If a Kantian really takes seriously the importance of moral autonomy — a person following her own conscience and making her own moral decisions — then she must be led to the rejection of all political authority. She must be an anarchist.²¹ On the personal interpretation of conscience, recognizing the sanctity of conscience certainly leads to anarchism. The personal optimizing stance leads us to disagree; if Betty as the public authority sees the personal optimizing stance as sacred — as deserving the highest degree of respect — then she will not claim authority over Alf to direct him against his own conscience. As Hobbes saw, it is very difficult to see how any system of political authority is consistent with such a view. It might seem that the inclusive, public, conscience avoids Hobbes's choice: if Alf's conscience takes account of the demands of our common public existence, the conscience of each can endorse public authority. As we have just seen, however, the inclusive view is not on its own sufficient to avoid Hobbes's choice: given the depth of reasonable pluralism about the right, the demands of each person's inclusive conscience differs. If Alf and Betty's public consciences differ, and if Betty represents public authority, she still seems to confront Hobbes's choice: acknowledge the sanctity of Alf's public conscience and so draw back from authoritative imposition on him, or insist that he defer to the hers.

5 RECONCILIATION THROUGH PUBLIC JUSTIFICATION

5.1 An Uncomfortable Conclusion and Unappealing Alternatives

The analyses of the last two sections have led to a rather uncomfortable conclusion. From the perspective of the moral agent, Alf should always act on his inclusive conscience — the final court over him as to what is required by the moral point of view (§3). But Betty, if she is uphold genuine public authority, seems committed to imposing her inner court's judgment on Alf (§4). Or, to be more democratic, Betty and her fellow members of the majority seem committed to imposing the sentence of

their concurring inner courts (their public moral consciences) on Alf, even though they also admit that Alf's moral integrity requires that he always act on his public conscience, the best subjective guidance he can have. To continue the judicial metaphor, their inner courts are simultaneously claiming jurisdiction over Alf's actions while acknowledging that Alf should be guided by no judgment but his own. How, though, can any court claim jurisdiction over someone while insisting that he should always follow the directives of another, competing, court? Thus far it seems that the only way to avoid this incoherent view of moral jurisdiction is to either say that sometimes a person ought — morally ought — not follow his own conscience (as the personal conscience interpretation allows) or else embrace anarchism regarding both political and moral authority, and hold that each public person's conscience has supreme and uncontested jurisdictional authority over him, and so no one may claim authority to direct the morally relevant actions of another. However, both the personal interpretation of conscience and anarchism are deeply objectionable. Can we avoid the uncomfortable conclusion as well as these unappealing ways to escape it?

5.2 The Inclusive Conscience and Public Justification

Hill suggests a way out. "Universal agreement" among reasonable persons who disagree, he says, could be "a regulative ideal, perhaps constituting 'correctness' about what is 'objectively' right" (FCC: 37).²² A more contractual understanding of Kantianism might accommodate disagreement about the right. Rather than seeing moral legislation as an individual decision procedure, or even as each person coming to conclusions based on her own public conscience, we might understand the regulative ideal as one of *agreement among diverse perspectives*. Of course our judgments are still fallible, but the fallible judgment is now about what is the object of consensus among diverse perspectives (or, we might, diverse consciences), not what each individual thinks is best from the inclusive moral point of view. To justify a moral judgment one must have a reasonable belief (which is fallible, and which one holds with humility) that all reasonable public consciences in some way endorse it.

Suppose Betty takes the inclusive view: she considers not only the various standards supporting and telling against various rules and their prohibited, required or permitted actions, but also considers the rules (and the interpretation of rules) that reasonable others see as acceptable and the case for coordination on some rule and reasonable interpretations of it. And given the requirement of due care, she engages in public deliberation with others so as to check her conclusions. Because she has rejected the optimizing stance, and recognizes the importance of coordination, her conscience is alert to the necessity that she not insist on what she sees as the best rule or interpretation as the one and only possible moral rule or interpretation (§3.4). To again employ the judicial metaphor, if Betty's personal deliberations are evaluated by the court of the first instance, this still must pass the verdict of a review court that insists that she take seriously public disagreement and the requirements of public coordination, and seek a public moral and political order that respects the consciences of all. She takes up the public perspective and appreciates reasonable disagreement in each person's public conscience about what is the best, or optimal, public authority. Indeed, she acknowledges that the very possibility of a public authority that can be endorsed by everyone's conscience requires that she renounce the optimizing stance about the best system of public rules, or the best system of public authority. Reasonable pluralism about the right implies that conscientious moral agents, exercising their rational powers as well as can be expected will never agree about the best or optimal moral rule or principle.²³

Suppose then that Betty orders the set of proposed public moral rules, or legal regulations, over some matter \mathcal{X} ; call this set $\{\mathcal{R}_1 \dots \mathcal{R}_n\}$. The rule that she ranks first is that she would choose if she were the Kantian legislator for all. But she is not, and we face deep disagreement, so Betty must consider alternative rules. Because she has accepted the moral case for accommodating the inclusive consciences of others (§3.4), she will not insist on her first, optimizing, choice, but will be willing to live under other rules too. To be sure, at some point she may simply be unable to endorse some candidate rule \mathcal{R}_i as recognizably moral, and so something that she can accept with good conscience; even once Betty has rejected the stance of the lone

Kantian, optimizing, legislator for the perspective of a community seeking agreement, there will be some proposals that she will see as beyond the pale (§2.2).²⁴ Suppose, then, she identified an eligible set $\{\mathcal{R}_1 \dots \mathcal{R}_k\}$. What might happen when she confronts the verdict of Alf's final inner court, his all-things-considered conscientious judgment about his eligible set?

One possibility is that Alf may have identified a set of acceptable rules, and the sets overlap on just one rule, \mathcal{R}_i . If so, their inclusive consciences endorse a common rule as acceptable: they both can act on this rule in good conscience, and obtain the benefits of a common public moral (and by extension, political) life. Suppose Betty demands that Alf ϕ on the grounds that \mathcal{R}_i requires it. Here Betty is employing the public perspective since she can demand that Alf not do what his personal optimizing stance favors (say \mathcal{R}_j is favored by his optimizing deliberations, and it calls for not- ϕ), while at the same time Alf's inclusive conscience itself endorses the action. Consequently, even though it is not best by his personal lights, it is appropriate for him to feel guilty if he fails to ϕ ; to fail to ϕ would be, as it were, to act on his lower court's judgment (not ϕ because of \mathcal{R}_j) which has been overturned on review. Thus the moral reactive attitudes would be engaged by his failure to acknowledge the authority of \mathcal{R}_i as the public moral rule.²⁵ Alf's inclusive conscience thus enforces the dictates of \mathcal{R}_i .

Another possibility is that there is overlap between Alf and Betty's eligible sets, but the overlap is not a singleton, but a subset with multiple elements. They are then confronted with an additional problem: how to select from multiple possibilities such that both have reason to endorse the selected rule (principle, etc.). Here the case for a constituted public authority to select from the eligible is strong.²⁶ There are many interesting things to say about how they might go about coordinating on one member of this common eligible set,²⁷ but the crucial point is that public authority endorsed by their inclusive consciences is not a will-o-the-wisp, but a live possibility.

So let us consider the worrisome case, where Betty discovers that Alf's set of acceptable alternatives does not overlap with hers. What might they do? First, each might go back and reconsider his or her judgments. Having found that they cannot

live together under common public authority without violating the consciences of at least one is a troubling conclusion. Thus one or both may decide that that he or she has been too insistent on the personal perspective, and has not taken sufficient account of the great goods of a common public life. It is easy to underestimate the importance of this reason to reconsider. If, as Hill indicates, it can be “disastrous” to reject the claims of public authority (CA: 260), this disaster is morally relevant and gives one powerful reason to think again about what common rules and principles are acceptable.

Suppose, then, that Betty has reconsidered. She again examines Alf’s eligible set, finds no overlap, and concludes that none of Alf’s eligible rules are acceptable. Her final court of appeal convicts *all* of immorality. In good conscience she cannot live under any, even when giving all due weight to the great value of public authority. What might she conclude about Alf? She may, and in all probability will, conclude that he has failed to arrive at a judgment that adequately discharges the duty of due care. Just because Alf reports that his judgment has been arrived at by due care, it does not follow that Betty must accept this verdict. On the Hill-Kantian account, a report of the demands of conscience is not a report of an infallible inner voice, but a claim to conscientious judgment. But to claim that one has conscientiously arrived at a judgment, or even to sincerely believe that one has arrived at such a judgment, is distinct from actually having done so. A court may proclaim that it has arrived at a verdict with all due care, but an appeals court may strike it down because it did not properly consider some evidence before it, was biased, or rushed to judgment. When Betty disagrees with Alf she must satisfy herself that his claim to have exercised due care is warranted. If she finds it faulty, then she will not take his depiction of his eligible set as a bona fide demand of his conscience. Again, conscience requires that his deliberations live up to standards of due care. In this case Betty may form a warranted belief that, while Alf claims that \mathcal{R}_i is not in his eligible set, it really is, and if he exercised due care and diligence he would have come to that conclusion. In this case, Betty’s insisting that he conform to \mathcal{R}_i is not a violation of the sanctity of Alf’s conscience.

Some may think this rather high-handed of Betty. One might ask, “Who is she to appoint herself the review court of Alf’s deliberations?” Yet the cognitive nature of a claim to conscience on the Hill-Kantian view invites others to evaluate your claim that you have exercised due care in canvassing the relevant moral considerations, relevant information, the judgments of others, and the great values of public authority. As with any review court, simply that Alf has arrived at different conclusions is not an adequate grounds for reversal, but Betty’s conclusion that due care has not been fulfilled in his deliberations may well ground it. We cannot help but serve as review courts for each other’s claims to conscience, at least once we have rejected conscience as an inner voice that is simply reported by its hearer (§2.1). If this is true, then, we must modify Hill’s claim that Alf’s conclusion that he has fulfilled his duty of due care — the dictates of his conscience — shows that he is morally blameless (§2.3). Although from his perspective, he has done all that can be expected of him, Betty disagrees, as does any court of review that determines that a lower court has failed in due diligence. While it is nevertheless the case that any court can only do what it sees as best, it also can be true that it can make an error about whether it has adequately discharged its responsibilities. All this is distinct from Betty’s judgment as to whether Alf’s views are objectively correct.

To reconcile the sanctity of conscience with public authority, the latter must be justified to all those reasonable moral agents who have fulfilled their duty of due care in considering the moral issue at stake. This is more than a hope or an aspiration. As one who calls on the authority of public norms and laws, if Betty is to avoid the uncomfortable conclusion and the unappealing ways of avoiding it (§5.1), she must have good grounds for thinking that these norms do not violate the conscience of any of those subjected to them. This reconciliation is only possible once we recognize that abandoning the optimizing viewpoint is itself required by due care. Those who insist on their sectarian conclusions — who insist that the only acceptable basis for public moral authority is libertarian, egalitarian, utilitarian, virtue, welfare or whatever — believe that conformity to their personal public ideals is required by their inclusive conscience, but they have failed to exercise due care

and have given insufficient weight to the great good of public authority that can be endorsed by the consciences of all.

5.3 Deep Moral Conflict

The last possibility to be considered is that Betty's court of review may find that Alf has exercised all due care, and yet his eligible set does not have any elements in common with hers, and after careful reconsideration of her own deliberations, she cannot in good conscience expand her eligible set to include elements of his. We now confront two questions: (i) whether Betty may impose her moral views in the sense of requiring Alf to ϕ because her inclusive conscience requires ϕ -ing and (ii) whether she can morally exercise coercion against Alf, to stop him from γ -ing because her inclusive conscience dictates that γ -ing is wrong.

Regarding (i), Betty must accept that any claim to authority she exercises over Alf to ϕ would violate his conscience. Yet she also believes that a moral person should always follow his conscientious opinions, so Betty would again confront the uncomfortable conclusion (§5.1) that she has final authority over Alf such that she may direct him to ϕ but he has final authority to determine for himself whether to ϕ . Moreover, she would have to acknowledge that should he not ϕ , he should not feel guilty for his failure to ϕ , for he has followed the best guide he has to the moral thing to do, his inclusive conscience. Indeed, for Alf to ϕ would be for him to act against his moral duty as he sees it after he has exercised due care, and Betty has confirmed in her own mind that he has properly exercised it. In light of all of this, for Betty to insist that Alf follows the dictates of her public conscience rather than his own must be simply to assert the interpersonal superiority of her own public conscience; but this is just the sort of presumption of moral superiority that reasonable pluralism precludes, and that Hill wisely repudiates. Betty, then, should not insist that Alf ϕ because it is required by morality as she understands it. In many cases this grounds a recognition that Alf is a conscientious objector; Betty acknowledges that he objects to the requirement to ϕ on conscientious grounds, and he is following his own conscience.²⁸

(ii) The second question raises different issues. Betty may see that Alf is about to γ , and on her view this is a very serious moral matter, and so she contemplates employing force, or the threat of force, to stop him. Now this need not violate Alf's conscience, for if Betty is employing a public authority his conscience deems legitimate, his conscience may approve of the use of force against him to prevent him from γ -ing, not because he thinks γ -ing is reasonably held to be wrong from the public point of view but because he recognizes the great good of a legitimate authority, and does not wish his dissent on this matter to signal a global repudiation of the authority Betty represents.²⁹ Thus in this case, coercion against him is approved of by his inclusive conscience; Alf is willing to acknowledge the legitimacy of this use of coercion against him.

The deepest moral problems occur when Alf's conscience does not approve of the use of coercion against him; as he sees it he has a moral liberty to γ , and it is wrong for Betty to employ force to stop him. In thinking about these cases we should not focus on a person who is engaging in crimes against humanity, a Himmler, a person who delights in killing or some such maniacal agent. We must remember that Betty has concluded that Alf really has exercised due care in taking account of all the considerations that a reasonable moral agent would see as relevant; he does not merely claim that his conscience permits γ -ing, but Betty agrees that his inclusive conscience, having exercised all due care, leads to this. The possibility that one can live on terms that my conscience allows without violating the consciences of others turns on the deeper question of whether the most outrageous moral wrongs — those that in conscience I simply cannot permit to occur — may be approved of by other reasonable moral agents who (in my view) have exercised all due care in forming their judgments. Hill, we have seen, maintains that I simply cannot conclude this of those who are engaging in grossly immoral acts; to say that a person's conscience recommends an act is already to see the act as within the range of the morally intelligible (§2.2). If he is right, then the scope of conscientious moral conflict is greatly constrained, and it becomes less manifest that my conscience dictates that I have no choice but to employ coercion against the

consciences of others. For I must remember that that they are employing their best moral guides and that I agree that they have done so with all due care with a morally intelligible result, and my views of the demands of morality are not, from the public perspective, superior to theirs.

6 CONCLUSION: THE POSSIBILITY OF LIBERAL ORDER

Chandran Kukathas has written that “among the worse fates that a person might have to endure is *that he be unable to avoid acting against his conscience* — that he be unable to do what he thinks is right.”³⁰ To Kukathas this insight is the heart of liberalism. To Hobbes it is the enemy of social order. Hill aims to balance the liberal and the Hobbesian views, seeking to show that conscience is an important but fallible guide, and so sometimes we should follow not it, but the directives of public authority, and we may indeed be coerced in ways that are condemned by our conscience. A reconstruction of Hill’s analysis that focuses on (i) the inclusive conscience and (ii) a commitment to public justification, I believe, converges with Kukathas’s position. To be sure, as Hill shows us, conscience is not an infallible inner voice, and people can be wrong about what their consciences demand (because they may be wrong about having exercised due care in moral judgment). Yet recognizing the sanctity of the individual conscience is not, as Hobbes thought, inimical to public moral authority, for the inclusive conscience recognizes that its personal optimizing stance cannot dictate what is morally required in certain public contexts. The public conscience repudiates the sectarian, private, conscience that so worried Hobbes. This repudiation, however, does not take the form of a public authority that overrides or supplants the individual conscience: the inclusive conscience transcends its personal optimizing stance to take up the public view and seeks accommodation with the consciences of others.

Notes

¹ Thomas Hill, "Conscience and Authority" in his *Respect, Pluralism, and Justice: Kantian Perspectives* (New York: Oxford University Press, 2000): 260-74 at p. 260. (Hereafter referred to as "CA.")

² Thomas Hobbes, *Leviathan*, edited by Edwin Curley (Indianapolis: Hackett, 1994), p. 212 (chap. 29, ¶7). Emphasis added.

³ CA and "Four Conceptions of Conscience" in *NOMOS XL: Integrity and Conscience*, edited by Ian Shapiro and Robert Adams (New York: New York University Press, 1998): 13-52. (Hereafter referred to as "FCC".)

⁴ Hitler is said to have explicitly attacked moral conscience: "Conscience is a Jewish invention. It is a blemish, like circumcision....Providence has ordained that I should be the greatest liberator of humanity. I am freeing men from the dirty and degrading self-mortification of a chimera of conscience and morality." As quoted by Herman Rauschning and reported in Robert E. Conot, *Justice at Nuremberg* (New York: Basic Books, 1983), p. 10.

⁵ In CA Hill considers three accounts; in the much longer FCC, he deals in some detail with a fourth, Joseph Butler's. Although Butler's analysis is of interest in its own right, its consideration is not necessary to appreciate the attractiveness of Hill's Kantian proposal; I shall thus follow CA's identification of the alternatives here.

⁶ I argue for this claim more fully in "On Seeking the Truth (whatever that is) Through Democracy: Estlund's Case for the Qualified Epistemic Claim," *Ethics*, vol. 121 (January 2011): 270-300.

⁷ Quoted in Conot, *Justice at Nuremberg*, p. 256.

⁸ Which Himmler apparently thought was especially "hard." Ibid.

⁹ Which, I think, is doubtful. After instructing them to fulfill this "hard" task, Himmler immediately adds "I ask you only to hear and never talk about what I tell you in this circle." This indicates why we should be very careful in how we employ examples from the Nazi regime in philosophy; it is all too often supposed that Nazis simply had a different, alien, morality, which they could assert publicly without any inkling that what they were doing was unspeakable. Apparently the Nazi audience went out of the meeting reeling; Albert Speer was to insist that he never heard the speech. Ibid.

¹⁰ See John Rawls, *A Theory of Justice*, revised edn. (Cambridge, MA: Harvard University Press, 1999), pp. 74-5.

¹¹ Mill, *On Liberty*, in *The Collected Works of John Stuart Mill*, edited by J.M. Robson (Toronto: University of Toronto Press, 1963), vol. 18, chap. 2. I have called this Mill's master epistemic claim in my "Controversial Values and State Neutrality in *On Liberty*" in *Mill's On Liberty: A Critical Guide*, edited by C.L. Ten (Cambridge: Cambridge University Press, 2008), pp. 83-104.

¹² Although Hill does not invoke an exclusionary reasons account of authority, such an analysis would not undermine this conclusion. On an exclusionary account such as Joseph Raz's, when an authority provides Alf with a reason to go to war despite the fact that his first-order moral reasons indicate that it would be wrong, the authority does not provide countervailing first-order reasons that, if Alf accepted, would defeat his other first-order reasons. Rather, the authority is said to provide second-order exclusionary reasons — reasons not to consider his first-order moral convictions in deciding what to do. But again, if after due care Alf believes that the moral point of view endorses following the exclusionary reasons, then on the inclusive view his conscience would confirm that the morally appropriate thing to do is to obey the authority. On exclusionary reasons, see Joseph Raz, *Practical Reason and Norms* (London: Hutchinson, 1975) pp. 35ff.

¹³ I consider some of the evidence for this in *The Order of Public Reason* (Cambridge: Cambridge University Press, 2011), chaps III and IV.

¹⁴ For evidence of this, see *ibid.*, pp. 202-5.

¹⁵ Perhaps, one might think, it is not important that conscience considers compliance with social norms so long as the norms are enforced through feelings of guilt. Like any other emotion, however, guilt can be irrational; if one does not believe that one has done wrong, guilt is inappropriate. And conscience is the inner court which determines whether we have done wrong. If there is room in a Kantian view for the idea that social norms are to be upheld by guilt, it must be a rational guilt. See *ibid.*, pp. 204-5.

¹⁶ "Where interests conflict, there are many possible regulations dealing with the conflict. The directive embodying the regulation would not be properly moral (as opposed to being legal or conventional) unless it *purported* to be the *best possible* way of regulating such a conflict." Kurt Baier, "Moral Obligation," *American Philosophical Quarterly*, vol. 3 (July 1966): 210-226, at p. 226. Emphasis in original.

¹⁷ Christopher J. Eberle, *Religious Convictions in Liberal Politics* (Cambridge: Cambridge University Press, 2002), p. 105. Emphasis in original.

¹⁸ *Ibid.*, pp. 104-5.

¹⁹ *Ibid.*, p. 104.

²⁰ Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), p. xlix.

²¹ Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper & Row, 1970).

²² Yet, he immediately adds “in practice this would only be an aim and a hope.” My aim (or at least my hope) is to show that it can be a real, practical, requirement.

²³ Cf. the aim of the parties in Rawls’s original position is to agree on the best alternative from a set of options. John Rawls, *A Theory of Justice*, §21.

²⁴ I consider these matters in more depth in *The Order of Public Reason*, pp. 310-21.

²⁵ See P. F. Strawson, “Freedom and Resentment,” *Proceedings of the British Academy*, vol. 48 (1962): 187-211. I consider the conditions under which these reactions to the violation of public moral rules are appropriate in *The Order of Public Reason*, chap. IV. We can extend this analysis to legal rules.

²⁶ I make this case in *Justificatory Liberalism* (New York: Oxford University Press, 1996), parts II and III.

²⁷ Some of which I consider in *The Order of Public Reason*, chap. VII.

²⁸ These remarks only scratch the surface of exceedingly complex matters. See Rawls, *A Theory of Justice*, §§56, 58.

²⁹ See *ibid.*, §§57, 59.

³⁰ Chandran Kukathas, *The Liberal Archipelago* (Oxford: Oxford University Press, 2003), p. 55. Emphasis in original.