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Foundations for Freedom of Conscience: Stronger than You Might Think

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Why protect conscience? In an insightful and challenging article, Steven Smith explores this question and concludes that the case for conscience is much weaker than the expanding rhetoric of freedom of conscience in modern legal and public discourse suggests.[1] When Smith speaks of conscience, he is referring to a person's sincere convictions about what is morally required or forbidden.[2] A person acts from conscience when his or her actions are based upon such sincere moral convictions.[3] It is a truism, Smith acknowledges, that individuals should always act in accordance with what they believe to be morally right, but why should the larger society or the state accommodate claims of conscience when an individual's conscience requires something that conflicts with established social and legal rules?[4] Why should acts based on

* Associate Professor of Law, Villanova University School of Law. J.D., 1994, Yale Law School; M.A.R., 1991, Yale Divinity School; B.A., 1989, Yale College. My thanks to Ed Eberle for the opportunity to participate in this symposium, to Dean David Logan and those at Roger Williams for their gracious hospitality, to Steve Smith for the chance to ruminate and comment on such an excellent and thought-provoking paper, and to all the symposium participants for such rich contributions and discussion.

1. Steven D. Smith, *The Tenuous Case for Conscience*, 10 ROGER WILLIAMS U. L. REV. 325, 325-26, 357-58 (2005).

2. *Id.* at 328.

3. *Id.*

4. *Id.* at 337-40. For Smith, accommodation need not take the form of an exemption from generally applicable rules. *See id.* at 331 n.18. Accommodations can take different forms depending on the context and involve different degrees of deference from the state. Smith is concerned with "whether and why the state, or perhaps "society," should, *at least as a prima facie matter*,

conscience receive special respect or deference from the government when actions based on other types of sincere desires and motivations are not afforded the same protection? Indeed, the case for conscience seems especially difficult to make when political decision makers draw upon their own moral convictions in formulating the policies to which the conscientious dissenter objects.[5] If policy makers sincerely believe that the dissenter's moral convictions are mistaken, why should the state take special steps to accommodate these erroneous judgments?[6]

Smith argues that a strong case for freedom of conscience can only be made "in rarified environments."[7] In the past when morality was viewed by most citizens in objectivist terms and when what Smith refers to as "moral authenticity"[8] was regarded as a moral good, respecting conscience, including erroneous conscience, made sense.[9] These were the assumptions about morality embraced by Roger Williams and the leading proponents of freedom of conscience in the founding era.[10] Today, however, especially in "the more reflective sectors of our society," objectivist accounts of morality are highly contested.[11] Now, conventionalist, subjectivist and nihilist understandings of morality are more common, and none of these perspectives can provide a strong foundation for respecting conscience.[12]

In his article, Smith pursues a rigorous examination of the types of assumptions about morality that are necessary to support a tenable case for protecting conscience, and his analysis is forceful and thought-provoking. I am, however, not convinced that moral objectivism alone provides the needed foundation for protecting conscience. To the contrary, conventionalist, subjectivist and nihilist assumptions about morality all support persuasive arguments for freedom of conscience. I do agree, however, that the

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respect claims of conscience." *Id.* at 329-30 (emphasis added). He asks, "[o]n what assumptions, moral or metaethical, would it seem sensible for the state to give at least some degree of deference to claims of conscience?" *Id.* at 330.

5. *See id.* at 339-40.
6. *See id.*
7. *Id.* at 357.
8. *Id.* at 340-43.
9. *Id.* at 343, 357-58.
10. *Id.* at 342.
11. *Id.* at 358.
12. *Id.* at 357-58.

case for conscience is stronger when it is based upon moral objectivism, and that moral objectivism, combined with what Smith refers to as moral authenticity, supports an especially convincing defense of conscience. Indeed, I would go even further than Smith. In my comments below, I argue that the particular combination of moral objectivism and moral authenticity adopted by Roger Williams and later proponents of freedom of conscience in the founding era provides a unique and uniquely compelling case for protecting conscience.

I. DEFENDING CONSCIENCE FROM NONOBJECTIVIST ASSUMPTIONS

Smith begins the analysis in his article by describing a concrete situation that gives rise to a claim of conscience, and in the discussion that follows, he seeks to demonstrate that the strength of this claim will depend upon one's assumptions about the nature of morality. Smith's scenario posits a wise and benevolent sovereign who has decided after careful deliberation to go to war with a neighboring country and has required all healthy adult males to serve in the army.[13] One of the sovereign's subjects believes that the war is morally impermissible and on grounds of conscience refuses to participate in the draft.[14] Does the sovereign, Smith asks, have any reason to excuse this conscientious objector from service?[15]

According to Smith, the answer to this question depends upon what the sovereign understands morality to be or, in other words, upon his "metaethical" presuppostitions about the nature of morality.[16] Smith describes four different possibilities: objectivist, conventionalist, subjectivist and nihilist metaethics.[17] According to an objectivist understanding of morality, morality is something "'real'" or objective, something "given," "somehow 'there'" apart from our opinions about it.[18] A conventionalist understanding of morality views morality as a matter of convention or social practice; morality consists of "conventional rules and principles that a

13. *Id.* at 330.
14. *Id.*
15. *Id.* at 330-31
16. *Id.* at 329.
17. *Id.* at 332-34.
18. *Id.* at 332.

society accepts."[19] Subjectivist views of morality include a range of ethical theories that envision morality as something "generated by individual subjects."[20] For the subjectivist, morality is self-legislated.[21] For the nihilist, morality is "not real at all – . . . it is an illusion or sham, embraced by mistake or perhaps in an effort of the weak to enslave the strong."[22] According to Smith, of these four metaethical presuppositions about the nature of morality, only the objectivist view can support a strong case for conscience.[23]

I am not convinced that metaethical objectivism alone supplies strong reasons for protecting conscience. Conventionalism, subjectivism and nihilism all support persuasive arguments for protecting conscience. Let us begin with nihilism. According to Smith, nihilist assumptions about morality are the least compatible with freedom of conscience, and, indeed, nihilism "nullifies] the case for respecting conscience."[24] Because the nihilist sovereign views morality as a sham or delusion, he will regard the conscientious objector as "deluded,"[25] and he will have no reason for viewing these delusional judgments as worthy of special respect.[26] I agree with Smith that the nihilist sovereign will not view claims of conscience as worthy of respect in themselves. These claims are, after all, based on delusion. However, the nihilist sovereign does have several reasons for protecting conscience that do not depend on the inherent value or even existence of morality.

Suppose, for example, that the nihilist sovereign recognizes that most ordinary people seem to demonstrate an innate propensity for thinking in moral terms when they contemplate future actions and consider the direction of their lives more generally. Despite the delusional nature of moral judgments, the sovereign's citizens seem always to be making these moral judgments. Furthermore, these moral convictions play a central role in the lives of the sovereign's subjects; his citizens' moral convictions not only guide action, but they also shape their sense of purpose and identity. The sovereign has tried to expose morality as a sham, but he

19. *Id.* at 333.
20. *Id.* (emphasis omitted).
21. *Id.*
22. *Id.* at334.
23. *Id.* at 357.
24. *Id.* at 356.
25. *Id.* at 357.
26. *Id.* at 356-57

has not succeeded. The tendency to think and act morally is nearly universal, and, indeed, it seems to be part of human nature. The sovereign has also observed that because moral beliefs are so central in his subjects' lives, forcing subjects to act against sincerely held moral convictions is a wrenching experience that causes severe psychological suffering and pain. Certainly, the nihilist sovereign has noticed that any time his subjects are forced to act against strongly held commitments, they experience significant psychological pain, but the pain experienced when these commitments are moral in nature is different. When a subject objects to the state's policy on moral grounds, forcing her to do what she believes is morally wrong is experienced as destructive of her very identity as a person. Thus, the nihilist sovereign may well decide to accommodate conscience in order to avoid this type of severe suffering.

Even if the nihilist sovereign is not concerned about his citizens' well-being, he should see the wisdom in reducing such suffering whenever possible. Because moral convictions are so integral to his subjects' sense of identity and personhood, dissenters are likely to resist laws that require them to disobey conscience even if resistance comes at great personal cost. If such resistance becomes widespread, it may lead to political instability and unrest. The nihilist sovereign need not believe that morality is real in order to value the peace and prosperity of his kingdom.

Moreover, even if the sovereign's dissenting subjects submit to the sovereign's orders and do what they believe to be morally forbidden without resistance, civil peace and order are threatened. The peace and order of the realm requires a citizenry that is law-abiding, willing to follow social and legal rules, and ready to act for the larger social good. Morality may be a delusion, but humanity's moral proclivities encourage such respect for laws and dedication to the public good. Forcing subjects to act contrary to conscience will weaken conscience and with it social stability and order. A wise nihilist sovereign may well conclude that it is better to enjoy the fruits of false consciousness than undermine his subjects' moral convictions.

A sovereign who embraces a subjectivist understanding of morality will also have reasons for respecting conscience. For the subjectivist sovereign, morality is not something objective that exists apart from our opinions about it. Rather, morality is self-

legislated: individuals generate their own moral rules whether from intuition, emotion, reason or some other basis.[27] According to Smith, it is difficult to understand just what the subjectivist means when she describes a conviction as a "moral" conviction or to explain how moral convictions differ from nonmoral judgments, tastes or preferences.[28] I am not convinced of this difficulty. For the subjectivist, moral convictions are simply each person's beliefs about what is right and wrong. An individual may dislike war, fear war or believe that war is foolish, but all of those judgments are different from the belief that war is wrong.[29] Smith is correct to observe that there may be nothing generalizable about the content of each person's moral beliefs.[30] For some, morality is based on reason while for others it is based on the heart.[31] For some, moral rules are standards that are universalizable to all other moral agents while for others moral claims need not have this broad appeal.[32] What moral convictions have in common is a judgment about the rightness or wrongness of the matter in question regardless of how individual moral subjects have come to arrive at that conclusion.

But, why, asks Smith, should a sovereign who has adopted a subjectivist metaethics give special deference to claims of conscience when moral claims may be based upon so many different and even idiosyncratic criteria?[33] To see why, suppose that our subjectivist sovereign, like many moral subjectivists today, has adopted a subjectivist understanding of morality after self-consciously rejecting an older view of morality as something objective, for example, as something given by a transcendent Creator who has shaped human nature and human ends. Our subjectivist sovereign no longer believes that God exists. There are only individuals who create their own moral standards, but therein, says

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27. *Id.* at 333.

28. *Id.* at 351-52.

29. *Cf.* Ronald Dworkin, *Objectivity and Truth: You'd Better Believe It*, 25 PHIL. & PUB. AFF. 87, 128 (1996) ("Morality is a distinct, independent dimension of our experience, and it exercises its own sovereignty.").

30. *See* Smith, *supra* note 1, at 352-56.

31. Smith finds attempts to distinguish moral beliefs from other preferences on the basis of rational consistency unconvincing. *See id.* at 353-56.

32. Smith also rejects universalizability as a criterion for distinguishing moral and nonmoral views. *See id.*

33. *See id.* at 356.

the sovereign, lies our human dignity. We each are lawgivers to ourselves, each little gods, and our dignity lies in this capacity to create and pursue our own moral vision. To be sure, we may be tempted to despair in a lonely universe without a transcendent source, meaning or purpose, but our capacity to determine our own moral rules and shape our own sense of meaning is our consolation. It is in choosing that we gain our worth and value, not in what is chosen. A sovereign who holds such views will surely try to accommodate her subjects' ability to make and pursue their own moral choices as much as possible.

A conventionalist understanding of morality also provides reasons for protecting conscience. According to Smith, the conventionalist sovereign views the moral order as purely a matter of social convention.[34] Moral rules are simply the ethical norms that a society accepts.[35] In Smith's view, a conventionalist sovereign has no reason to protect conscience because he will view the position of the conscientious objector as mistaken and confused.[36] For example, if the sovereign's decision to go to war is supported by the larger community, a dissenter who objects to the war on moral grounds is not making a coherent moral judgment. For the conventionalist, moral rules are determined by social convention, and when the conscientious objector dissents from the community's judgment, her position does not make sense as a moral claim. It is, rather, an idiosyncratic view that falls outside the community's moral conventions altogether. The dissenter may present her position as a more faithful interpretation of the community's moral practices than the position of the sovereign and the majority of his subjects, but if the dissenter does not succeed in changing the minds of her fellow citizens, to press her argument further on moral grounds makes no sense.[37] According to Smith, "in being idiosyncratic [the dissenter] cannot plausibly claim to be – or be viewed as being – more truly conventional than the conventions themselves."[38]

Smith acknowledges that there may be conventionalist societies that place a high value on what he refers to as individual

34. *See id.* at 343-48.
35. *See id.*
36. *Id.* at 344-48.
37. *Id.* at 347-48.
38. *Id.* at 348.

"moral authenticity."[39] Such a society will value the ability of individuals to live in accordance with their moral convictions and to be "true" to themselves regardless of whether their beliefs are correct or mistaken.[40] Smith recognizes that the sovereign in such a society might decide to protect conscience in order to avoid forcing individuals to be false to their moral convictions. However, Smith argues that such a conventionalist culture is "improbable"[41] and "deeply unstable."[42] For conventionalists, "social practices and beliefs are the locus and essence of morality, and our duty is to conform to them."[43] There is, therefore, a built-in resistance within conventionalist cultures to valuing and protecting the individual's ability to pursue different paths.[44]

The weakness of Smith's argument that conventionalism does not support a strong case for freedom of conscience is that his argument rests upon too simplistic an understanding of conventionalist ethics. Smith assumes that those who hold a conventionalist view of morality will simply equate morality with existing social conventions. Morality is, for the conventionalist, determined by social convention; it is quite simply what the community thinks it is. Thus, if a dissenter with different views is unable to convince the community to change prevailing conventions, the dissenter's position does not make sense as a moral claim. The dissenter's views fall outside the content of morality in a conventionalist framework, and there is no reason for the conventionalist sovereign to give them special deference.

However, consider a conventionalist sovereign with a more sophisticated understanding of morality. Our more sophisticated sovereign has been a studious observer of human nature, social relations and the history of her country. She has observed that morality is a complex social practice. While she believes that morality is a social creation, she thinks that it would be a mistake to simply equate morality with the content of existing social norms. Such an equation does not adequately account for the fact that the content of any society's ethical conventions is constantly changing

39. *Id.* at 349-50.
40. *See id.* at 340-42.
41. *Id.* at 350.
42. *Id.*
43. *Id.* at 350-51.
44. *Id.*

and developing over time. Morality is an ongoing tradition that is continuously renewing itself, not simply a set of social conventions. The process by which morality develops over time is multifaceted. It seems, our sovereign observes, to be guided by a variety of social goals. Some of these goals are constant through time, such as civil peace and order, economic development, and the maximization of the physical and mental welfare of community members. Other goals seem to change with time, such as a pressing need to repel attack by a new and dangerous enemy. Our sovereign further observes that change occurs in response to a range of different stimuli. New experiences and information may, for example, require new moral standards in order for society to function well and meet social goals. Encounters with new moral perspectives from groups outside the community may lead the community to revise its own ethical norms as may novel ideas from those within.

Our sovereign does not fear change but, rather, views it as essential for social progress. Familiarity with the history of her own country has taught her that change can generate improved understandings of basic moral principles, better ways to reach enduring social goals, and better explanations for new facts and information. From her studies, our sovereign concludes that wise government requires humility and the recognition that the social norms of any single generation are limited and provisional. Thus, for our sovereign, it would be a mistake to too readily equate morality with current social norms. Morality is better understood as an ongoing tradition that changes over time, often in progressive directions, and our sovereign wants to facilitate such change. Certainly, freedom to articulate and express new ideas will be essential.

Moreover, and perhaps most important for our purposes, our sovereign has noticed that individuals often play an important role in the process by which conventions develop and progress. Morality is created in community, but subgroups and individuals with novel ideas are central to this process of formation and growth. The example of Roger Williams has not escaped our sovereign. As an unpopular defender of religious liberty in early America, Williams challenged ideas about the relationship be-

tween church and state that had been embraced by the Christian community for over 1300 years.[45] Williams did not achieve immediate success. It took another century for his ideas to begin to take root in America, but today, what began as a seemingly idiosyncratic view has been embraced by Christians throughout the world. Roger Williams's rejection of religious persecution and church-state entanglement has proved to be the more faithful interpretation of Christian principles as well as the better foundation for civil peace and prosperity.

The example of Roger Williams has impressed upon our sovereign the need to protect dissenting views, especially unpopular ones. In Roger Williams our sovereign has seen the dissenting individual play the role of trail-blazer. At other times in history, the individual dissenter has been the moral conscience of the community, calling and reminding the community to live up to its moral ideals. At still other times, the example of dissenters has checked and restrained the hasty judgments of unreflective social and political decision makers. Indeed, in the case of past wars, conscientious objectors have played an important role in challenging the community to deliberate carefully about the wisdom and morality of using violence to advance national interests. During some of these wars, conscientious objectors have proved to be the community's better half. Our sovereign is convinced that war is morally permissible now, but history still cautions her that she may be wrong and that the dissenter may be the example of true progress. With all this in mind, our sovereign concludes that it is essential to accommodate the sincere moral convictions of her subjects wherever possible. The freedom of dissenters to pursue and witness novel and even unpopular ideas is critical to the vitality of social conventions.

In my view, Smith also overestimates the tension between conventionalist moral views and a commitment to individual moral authenticity. According to Smith, because conventionalism equates morality with social convention, the conventionalist values conformity to social rules and resists accommodation of dissenting views.[46] While it is certainly possible that such a tension

45. *See generally* JOHN T. NOONAN, JR., THE BELIEVERS AND THE POWERS THAT ARE 67 (1987).

46. *See* Smith, *supra* note 1, at 350-51.

may exist in some conventionalist cultures, it need not. Imagine, for example, a community of conventionalists who believe that humanity's capacity for moral reasoning and decision making is a source of great human dignity. In their view, the content of morality derives from social convention, but the primary value of morality lies in the individual's capacity to make and act upon moral decisions. It is the exercise of moral decision making that gives humanity its great worth. Most individuals will simply appropriate existing moral norms when they make moral decisions. Others may resist these norms (though none can escape the central role that social convention plays in shaping and defining the moral landscape within which individuals act). What matters, in either case, is not so much the choice that the individual makes, but that individuals deliberately and authentically act in accordance with their own moral convictions. Therein lies human dignity, and coercing those with dissenting views would violate this dignity.

Even if the conventionalist community that I have posited includes some, or even many, members who do care about the particular choices that individuals make and would like to see individual moral choices conform to social convention, they will reject coercion as a mechanism to achieve this goal. Coercion may produce outward conformity, but if the minds of dissenters are not changed, these dissenters will be acting in a way that is false to their moral beliefs. Such inauthenticity is itself a moral evil. Persuasion, not coercion, is the only route to achieving moral conformity without sacrificing moral authenticity. Thus, for the members of this conventionalist community, the truism that "a person should always do what he or she believes to be right"[47] is not just a prescription for individuals. It is a norm that must be respected by the larger community and reflected in its legal and social rules. The larger community must respect the conscience that the individual is bound to follow.

II. DEFENDING CONSCIENCE FROM OBJECTIVIST ASSUMPTIONS

While I have argued that conventionalism, subjectivism and nihilism all supply reasons for protecting conscience, I do agree with Smith that the stronger foundation is moral objectivism. In

47. *Id.* at 337.

Smith's view, moral objectivism alone is not sufficient.[48] An objectivist sovereign who believes that his dissenting subject is mistaken about what the objective moral order requires will not be persuaded to accommodate what he views as error without some additional premise or claim.[49] After rejecting several possibilities, Smith argues that a commitment to individual moral authenticity supplies such a premise.[50] A commitment to moral authenticity means prizing the ability of individuals to live in accordance with their moral convictions and, thereby, to be true to themselves regardless of whether their beliefs are true or false.[51] If the objectivist sovereign believes that individual moral authenticity is a good of the highest order, forcing even a mistaken subject to act against sincere moral convictions is a moral evil to be avoided whenever possible.

Smith suggests that only moral authenticity can supply the needed premise for respecting conscience in an objectivist context.[52] On this point, I disagree. In my view, moral objectivism need not be accompanied by a commitment to authenticity to support a tenable case for conscience. A variety of other premises would also give the objectivist sovereign persuasive reasons for protecting conscience. For example, suppose that the objectivist sovereign believes that there is an objective moral order but also believes that this order encompasses multiple conflicting and incommensurable goods. In other words, our objectivist sovereign embraces what is often referred to as value pluralism in contemporary political philosophy.[53] If the sovereign is a value pluralist, he will have good reasons for accommodating those who do not agree with his moral judgments. Citizens who embrace different moral convictions about war or other social issues are not necessarily wrong. They may simply be adopting a competing concep-

48. *Id.* at 336-37.
49. *Id.*
50. *Id.* at 340-43.
51. *Id.* at 340-42.
52. *See id.* at 357-58 (stating that within an objectivist framework, "it seems that freedom of conscience depends on a moral position that assigns preeminent value to something like 'authenticity,' even over conduct that conforms to objective moral truth.").
53. For an account of value pluralism by a leading proponent of this view, see WILLIAM A. GALSTON, LIBERAL PLURALISM: THE IMPLICATIONS OF VALUE PLURALISM FOR POLITICAL THEORY AND PRACTICE 29-35 (2002).

tion of the good which is just as legitimate as the values adopted by the sovereign. A sovereign who believes that the moral order includes a wide range of diverse and competing ways of life, all of which are morally legitimate, will favor protecting dissenting views that are different from his own.[54] While the value pluralist sovereign may not be persuaded to protect those dissenting views that fall outside the scope of legitimate ways of life, the sovereign who is realistic about the difficulty of evaluating the legitimacy of competing perspectives has strong reasons to protect as much dissent as possible.

Alternatively, let us suppose that our objectivist sovereign is not a value pluralist but, nevertheless, believes that his understanding of moral truth is incomplete. Such a sovereign will also favor protecting dissenting convictions. Like the conventionalist sovereign discussed above, this objectivist sovereign is humble about the accuracy of his moral judgments and recognizes that his views may be limited and provisional. He concludes, therefore, that broad protections for dissent are necessary to ensure that errors are exposed and progress towards truth is achieved. Even if the objectivist sovereign is certain that his judgments (and his judgments alone) are correct, he will, like the nihilist sovereign, want to avoid weakening the consciences of his citizens by forcing them to do what they believe is wrong. Such force will not convince his citizens of the truth, but will only enervate conscience altogether.

In each of these cases, the objectivist sovereign has reasons for protecting conscience that do not depend upon a commitment to moral authenticity. Moral authenticity certainly supports freedom of conscience in an objectivist setting, but it is not the only premise that does so.

Smith is correct, however, that moral objectivism provides a stronger foundation for conscience than conventionalism, subjectivism or nihilism. Whenever moral objectivism is combined with an additional premise or premises that support freedom of conscience, the case for conscience is stronger than defenses available in other settings. Although objectivist arguments for conscience

54. *See id.* at 119 ("A liberal pluralist society will organize itself around the principle of maximum feasible accommodation of diverse legitimate ways of life, limited only by the minimum requirements of civic unity.").

may appear similar to arguments made in other contexts (and some of the arguments that I have developed above do), objectivist arguments have greater force than conventionalist, subjectivist or nihilist defenses. The strength of the objectivist case derives from the way that morality is understood in the objectivist context. For the objectivist, morality is neither a human creation nor a sham. It is *really* "real." The moral order exists prior to social conventions and individual judgments, and it provides the standard for all human conduct and social relations. Human communities and their members exist under its judgment. This priority of objectivist morality over human convention means that the demands of the moral order have a special authority within the community. Morality is "higher law": its requirements must be observed even when obedience is difficult or costly. Thus, where the moral order requires freedom of conscience, freedom has primacy. The objectivist sovereign who believes that moral authenticity is a good of the highest order will, therefore, have extremely strong reasons for protecting conscience, as will the objectivist sovereign who recognizes that his understanding of moral truth is limited and that dissent may be the source of greater knowledge. Likewise, the value pluralist who realizes that the dissenter's competing conception of the good may be as legitimate as his own also has very strong reasons to do what he can to protect all legitimate visions of the good. Even the sovereign who believes that his moral judgments alone are true must be careful not to weaken the conscience of his subjects. If dissenting subjects are forced to do what they think is wrong, their commitment to moral truth altogether will be undermined. Thus, whenever an objectivist sovereign believes that respect for morality or the preservation or discovery of moral truth requires freedom of conscience, he will have very strong reasons to protect this freedom.

By contrast, freedom of conscience is more vulnerable in conventionalist, subjectivist and nihilist settings. All of these perspectives view morality as a human creation. Morality is not higher law that exists outside of us and over us and our communities. Morality has no authority independent of the status that we give to it, and moral values have no inherent priority over competing social values and interests. Thus, in conventionalist, subjectivist and nihilist societies, freedom of conscience may easily be overridden by competing social interests. For example, the conventional-

ist sovereign who understands the benefits of freedom of conscience may, nevertheless, be tempted to limit protections when she is convinced that dissent threatens other important social values or when she finds the message of dissenters to be especially offensive or repugnant. Likewise, the subjectivist sovereign who believes that human dignity lies in the capacity of individuals to create and pursue their own moral visions may be tempted to restrict freedom of conscience in cases where dissenting views are particularly unpopular and, thus, endanger civic harmony or some other public good. The nihilist will be especially likely to limit freedom of conscience whenever it does not serve his own interests or the interests of his realm. In short, whenever morality is merely a human creation, it is at the mercy of its human creators. The temptations to restrict freedom of conscience when it is costly will always be strong, but conscience is especially vulnerable in communities that do not link morality to an objective order that demands obedience even when obedience becomes difficult.

I also agree with Smith that moral objectivism combined with a commitment to moral authenticity provides an especially strong foundation for freedom of conscience. As Smith observes, moral objectivism combined with a commitment to moral authenticity was one of the primary justifications for conscience advocated by Roger Williams,[55] and it also grounded arguments for freedom of con-

55. *See* Smith, *supra* note 1, at 342. Williams made a number of other arguments as well. Williams's defense of conscience focused on matters of religious belief and worship, *see infra* notes 74-78 and accompanying text, and he argued, for example, that governments are just as likely to suppress religious truth as they are to suppress error. *See* ROGER WILLIAMS, THE BLOUDY TENENT, OF PERSECUTION, FOR CAUSE OF CONSCIENCE (1644) [hereinafter WILLIAMS, BLOUDY TENENT], *reprinted in* 3 THE COMPLETE WRITINGS OF ROGER WILLIAMS 1, 117, 136-37, 184-85, 206 (Russell & Russell, Inc. 1963). Williams also noted that Christ rejected the use of force. *Id.* at 117, 219, 425; ROGER WILLIAMS, QUERIES OF HIGHEST CONSIDERATION (1644), *reprinted in* 2 THE COMPLETE WRITINGS OF ROGER WILLIAMS, *supra*, at 241, 266-67. For Williams, God works through the Spirit of grace and his Word, not coercion. *See* WILLIAMS, BLOUDY TENENT, *supra*, at 80-81, 136, 160-61. Moreover, Williams argued that church and state are strictly separate, and, thus, the role of the state extends only to temporal matters, such as preserving civil peace and protecting the life and property of citizens. *See id.* at 73, 160-61; ROGER WILLIAMS, THE BLOODY TENENT YET MORE BLOODY (1652), *reprinted in* 4 THE COMPLETE WRITINGS OF ROGER WILLIAMS, *supra*, at 1, 81, 185; ROGER WILLIAMS, MR. COTTON'S LETTER LATELY PRINTED, EXAMINED AND ANSWERED (1644), *reprinted in* 1 THE COMPLETE WRITINGS OF ROGER WILLIAMS, *supra*, at

science in the founding era. This combination of moral assumptions has had a tremendous influence on the development of American law, and this impact demonstrates the power of these assumptions. Indeed, I would go even further than Smith. A close examination of the particular type of moral objectivism and moral authenticity embraced by Williams and leading defenders of conscience in the founding era reveals a unique and uniquely compelling case for conscience.

As Smith observes, in matters of religious belief and worship, Williams and later proponents of conscience in the founding era rejected force and were committed to voluntarism. They agreed that correct doctrine and worship without interior conviction is worthless in God's eyes. In Williams's words, "without faith and true persuasion," worship is a sin.[56] Founding-era Baptist Isaac Backus explained that "[t]rue religion is a voluntary obedience unto God,"[57] and "Christ will have no pressed soldiers in his army."[58] Thomas Jefferson and James Madison agreed. According to Jefferson, God "will not save men against their wills,"[59] and Madison insisted that it is the "duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him."[60] Not all of these figures would have completely endorsed Smith's description of moral authenticity. They certainly believed

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313, 325. In addition, Williams observed that coercing conscience leads to civil unrest and bloodshed. WILLIAMS, BLOUDY TENENT, *supra*, at 117, 219, 424. Coercion is also counterproductive: it weakens conscience, fosters hypocrisy, and tends to harden the convictions of those in error. *See* EDMUND S. MORGAN, ROGER WILLIAMS: THE CHURCH AND THE STATE 139 (1967).

56. WILLIAMS, BLOUDY TENENT, *supra* note 55, at 12.

57. ISAAC BACKUS, GOVERNMENT AND LIBERTY DESCRIBED (1778), *reprinted in* ISAAC BACKUS ON CHURCH, STATE, AND CALVINISM : PAMPHLETS, 1754-1789, at 345, 351 (William G. McLoughlin ed., 1968); *see also* ISAAC BACKUS, AN APPEAL TO THE PUBLIC FOR RELIGIOUS LIBERTY (1773), *reprinted in* ISAAC BACKUS ON CHURCH, STATE, AND CALVINISM: PAMPHLETS, 1754-1789, *supra*, at 303, 324; ISAAC BACKUS, A DOOR OPENED FOR CHRISTIAN LIBERTY (1783) [hereinafter BACKUS, A DOOR OPENED], *reprinted in* ISAAC BACKUS ON CHURCH, STATE, AND CALVINISM : PAMPHLETS, 1754-1789, *supra*, at 427, 438.

58. ISAAC BACKUS, A FISH CAUGHT IN HIS OWN NET (1768), *reprinted in* ISAAC BACKUS ON CHURCH, STATE, AND CALVINISM: PAMPHLETS, 1754-1789, *supra* note 57, at 167, 198.

59. THOMAS JEFFERSON, NOTES ON RELIGION (c. 1776), *in* SAUL K. PADOVER, THE COMPLETE JEFFERSON 937, 943 (1943).

60. JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), *reprinted in* 8 THE PAPERS OF JAMES MADISON 295, 299 (Robert A. Rutland & William M.E. Rachal eds., 1973).

that being true to one's religious convictions and acting in accordance with these convictions is essential for salvation. However, at least for Williams and founding-era Baptist supporters of conscience, living in accordance with one's beliefs is not enough. If one's beliefs are mistaken, being true to them will not be sufficient to gain salvation. One must also have the correct convictions. Force is wrong because outward conformity is never enough in God's eyes, not because acting in accordance with one's beliefs is itself a moral good. Nevertheless, their commitment to moral authenticity as they understood it certainly grounds a strong argument for conscience. If voluntariness is essential in religious life, coercing the erroneous conscience can do no good, and it will always undermine the moral worth of one's actions.

There is yet more at stake for Williams and founding-era proponents of conscience. When Smith describes their insistence upon voluntariness in matters of religion as one example of a more general commitment to moral authenticity, he risks obscuring the unique reasons why voluntariness was so important for them. For Williams and the founders, acting in accordance with one's convictions is essential in matters of religion because God desires to be in a free and willing relationship with the persons he has created. Williams and founding-era proponents of conscience believed that humanity has been created in relationship to God and that conscience is the medium for this relationship. All persons have conscience,[61] and it is through conscience that we come to know about God and what he requires.[62]

Williams and later defenders of conscience disagreed about the extent to which conscience is informed by reason or revelation,

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61. ROGER WILLIAMS, THE COPY OF A LETTER OF ROGER WILLIAMS OF PROVIDENCE, IN NEW ENGLAND, TO MAJOR ENDICOT, GOVERNOR OF THE MASSACHUSETTS (1651) [hereinafter WILLIAMS, LETTER TO MAJOR ENDICOT], *reprinted in* 6 THE COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 55, at 214, 219-20; *see also* MORGAN, *supra* note 55, at 128, 134.

62. *See* MORGAN, *supra* note 55, at 130, 133 (describing Puritan views about conscience shared by Williams). Thus, in the founding era, religious convictions were commonly referred to as "the dictates of conscience": conscience is the vehicle by which we understand God and his commands. The frequent use of this phrase is illustrated well by its appearance in numerous state constitutions adopted after 1776. *See* MASS. CONST. of 1780, pt. 1, art. II; N.H. CONST. of 1784, pt. 1, art. V; N.J. CONST. of 1776, arts. XVIII-XIX; N.C. CONST. of 1776, art. XIX; PA. CONST. of 1776, art. II; VT. CONST. of 1777, art. III; VA. DECLARATION OF RIGHTS (1776) § 16.

mind or heart, intuition or deliberation, nature or grace, the direct action of the Spirit or the guiding hand of the religious community. As a Calvinist Puritan, Williams believed that conscience was radically fallen.[63] While natural conscience retains knowledge of basic moral laws,[64] correct understanding in purely religious matters such as doctrine and worship requires the assistance of God through revelation as well as the power of the Spirit enlightening the mind to understand scripture correctly.[65] Founding-era Baptist supporters of conscience agreed with Williams though they put less emphasis on human learning and even more upon the direct work of the Spirit on the individual's mind and heart.[66] By contrast, for founders influenced by Enlightenment rationalism, reason plays a more prominent role in informing conscience, and Thomas Jefferson even insisted that reason is the "only oracle" by which one comes to the knowledge of religious truths.[67]

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63. *See* MORGAN, *supra* note 55, at 11.

64. *Id.* at 128.

65. *See, e.g.*, WILLIAMS, BLOUDY TENENT, *supra* note 55, at 80 (stating that conversion of heretics is something "which onely the finger of God can doe, that is the mighty power of the Spirit in the Word"); *id.* at 136 ("But to recover a Soule from Satan by repentance, and to bring them from Antichristian doctrine or worship, to the doctrine or worship Christian, in the least true internall or externall submission, that only works the All-power-full God, by the sword of the Spirit in the hand of his Spiritual officers."); *id.* at 160-61 (arguing that "Spirituall and Soul-causes, Spirituall and Soule punishment . . . belongs to that Spirituall sword with two edges, the Soule-piercing (in Soule-saving or Soule-killing), the Word of God") (emphasis omitted); MORGAN, *supra* note 55, at 11-13, 130-31, 133-34.

66. According to Isaac Backus, the Spirit "seal[s] his truth to the[] hearts" of believers, ISAAC BACKUS, A DISCOURSE SHOWING THE NATURE AND NECESSITY OF AN INTERNAL CALL TO PREACH THE EVERLASTING GOSPEL (1754), *reprinted in* ISAAC BACKUS ON CHURCH, STATE, AND CALVINISM: PAMPHLETS, 1754-1789, *supra* note 57, at 65, 104, and "enlightens [their] minds to understand [God's] word aright." *Id.* at 76. John Leland's words describing the "power of the gospel in the hand of the spirit" are especially dramatic: the word of God "tears off the veil of the heart—rends the stupor from the conscience—removes the film from the eye of the soul . . . ." JOHN LELAND, SERMON PREACHED AT ANKRAM, DUTCHESS COUNTY, N.Y., AT THE ORDINATION OF REV. LUMAN BIRCH (1806), *reprinted in* THE WRITINGS OF THE LATE ELDER JOHN LELAND 300, 305 (L.F. Greene ed., New York, G.W. Wood 1845).

67. Letter from Thomas Jefferson to Miles King (Sept. 26, 1814), *in* 14 THE WRITINGS OF THOMAS JEFFERSON 196, 197 (Andrew Lipscomb & Albert Bergh eds., 1903-04); Letter from Thomas Jefferson to Peter Carr (Aug. 10, 1787), *in* 6 THE WRITINGS OF THOMAS JEFFERSON, *supra*, at 256, 261. For Jefferson, the connection between God and persons is through reason rather than revelation or the work of the Spirit, and it is up to the individual to seek

However, all agreed that conscience only operates by understanding and persuasion.[68] God has chosen to relate to us not as automatons or puppets or unreflective beings; he has made us to

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God through free investigation. *See* Kathleen A. Brady, *Fostering Harmony Among the Justices: How Contemporary Debates in Theology Can Help to Reconcile the Divisions on the Court Regarding Religious Expression by the State*, 75 NOTRE DAME L. REV. 433, 451 (1999) [hereinafter Brady, *Fostering Harmony*]. While Jefferson believed that the heart is the source of moral knowledge, see Kathleen A. Brady, *Reflections on the Light: Judge Noonan's Contributions to the Debate on Religion in the Public Square*, 1 U. ST. THOMAS L.J. 480, 492 n.108 (2003) [hereinafter Brady, *Reflections*], it is through the mind that we relate to God, and humanity is not so fallen that special grace is required.

James Madison had a broader view of the means by which persons come to know God. Reason plays a role in informing this relationship, see Letter from James Madison to Frederick Beasley (Nov. 20, 1825), *in* 9 THE WRITINGS OF JAMES MADISON 229, 230 (Gaillard Hunt ed., 1900-10), but so does revelation, MADISON, *supra* note 60, at 303 (referring to the "light of revelation"), as well as intuition and common sense. *See* James Madison, Notes for Debates on the General Assessment Bill (Dec. 1784), *in* 8 THE PAPERS OF JAMES MADISON, *supra* note 60, at 195, 198 (observing the "propensity of man to Religion"); Letter from James Madison to Edward Everett (Mar. 19, 1823), *in* 9 THE WRITINGS OF JAMES MADISON, *supra*, at 124, 126-27 (stating that "there are causes in the human breast, which ensure the perpetuity of religion"); Letter from James Madison to Reverend Adams (1832), *in* 9 THE WRITINGS OF JAMES MADISON, *supra*, at 484, 485 (observing humanity's "propensities & susceptibilities" to religion and stating that "[t]here appears to be in the nature of man what insures his belief in an invisible cause of his present existence, and anticipation of his future existence"); Letter from James Madison to Frederick Beasley, *supra*, at 230-31 (arguing that "the infinity of time & space forces itself on our conception . . . ; that the mind prefers at once the idea of a self-existing cause . . . ; and that it finds more facility in assenting to the self-existence of an invisible cause possessing infinite power, wisdom & goodness"); *see also* Brady, *Fostering Harmony*, *supra*, at 457-58 (noting the influence of "Scottish Common Sense Realism" on Madison's thought, including the idea that basic beliefs about God and morality are self-evident propositions seen with intuitive force); Ralph L. Ketcham, *James Madison and Religion: A New Hypothesis*, *in* JAMES MADISON ON RELIGIOUS LIBERTY 175, 177, 179-80 (Robert S. Alley ed., 1985) (discussing the influence of Scottish Common Sense philosophy on Madison's religious views). For James Madison's teacher, John Witherspoon, the guiding hand of the religious community and tradition also play a significant role. JOHN WITHERSPOON, LECTURES ON MORAL PHILOSOPHY, *in* THE SELECTED WRITINGS OF JOHN WITHERSPOON 152, 167, 173 (Thomas Miller ed., 1990); *see also* Brady, *Fostering Harmony*, *supra*, at 459-60.

68. Indeed, Williams defined conscience as "a *persuasion* fixed in the mind and heart of a man, which enforceth him to judge . . . and to do so and so, with respect to God, his worship, &c." WILLIAMS, LETTER TO MAJOR ENDICOT, *supra* note 61, at 219 (emphasis added).

know and serve him by understanding and willing assent. For early American defenders of conscience, this relationship was sacred. Williams described the relationship between God and the saved sinner as a "Heavenly Marriage" characterized by love and consent.[69] For Isaac Backus, God was a loving parent.[70] James Madison described a less intimate relationship when he referred to God as "Governour of the Universe" and "Universal Sovereign" and to persons as his "subject[s],"[71] but conscience was no less "sacred" for him.[72] All also agreed that this relationship is deeply personal, a matter between "God and individuals."[73] Thus, for

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69. ROGER WILLIAMS, EXPERIMENTS OF SPIRITUAL LIFE & HEALTH, AND THEIR PRESERVATIVES (1652), *reprinted in* 7 THE COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 55, at 45, 51.

70. Backus points to 1 John 2: 18-27: "And John says, little children ye have an unction from the holy one, and ye know all things, and the anointing which ye have received of him abideth in you; and ye need not that any man teach you but as the same anointing teacheth you of all things." BACKUS, *supra* note 58, at 230; *see also* John Leland, Sermon Preached in Philadelphia (Apr. 17, 1814), *in* THE WRITINGS OF THE LATE ELDER JOHN LELAND, *supra* note 66, at 376, 379 ("Christ promised to be with his faithful servants unto the end of the world.").

71. MADISON, *supra* note 60, at 299.

72. James Madison, Essay in the *National Gazette* (Mar. 27, 1792), *reprinted in* JAMES MADISON ON RELIGIOUS LIBERTY, *supra* note 67, at 76, 77.

73. BACKUS, A DOOR OPENED, *supra* note 57, at 432 ("religion is ever a matter between God and individuals"); JOHN LELAND, THE VIRGINIA CHRONICLE (1790), *reprinted in* THE WRITINGS OF THE LATE ELDER JOHN LELAND, *supra* note 66, at 92, 108 ("religion is entirely a matter between God and individuals"); *see also* JOHN LELAND, THE RIGHTS OF CONSCIENCE INALIENABLE (1791), *reprinted in* THE WRITINGS OF THE LATE ELDER JOHN LELAND, *supra* note 66, at 177, 181 ("religion is a matter between God and individuals"); JOHN LELAND, A BLOW AT THE ROOT (1801), *reprinted in* THE WRITINGS OF THE LATE ELDER JOHN LELAND, *supra* note 66, at 233, 249 ("religion is, at all times and places, a matter between God and individuals"); *see also* Letter from Thomas Jefferson to A Committee of the Danbury Baptist Association (Jan. 1, 1802), *in* 16 THE WRITINGS OF THOMAS JEFFERSON, *supra* note 67, at 281, 281 (arguing that "religion is a matter which lies solely between man and his God"); MADISON, *supra* note 60, at 300 ("If [religious] freedom be abused, it is an offense against God, not against man: To God, therefore, not to man, must an account of it be rendered.").

Isaac Backus expresses this vividly: "[A]ll saints know that when they received Christ they had no creature to see for them, but each soul acted as singly towards God as if there had not been another person in the world." BACKUS, *supra* note 58, at 273. Williams also describes a deeply personal relationship between the individual and God when he refers to the relationship between God and the saved sinner as a "Heavenly Marriage." WILLIAMS, *supra* note 69, at 51; *see also supra* note 69 and accompanying text.

Williams and founding-era defenders of conscience, forcing conscience is so great an evil because it interferes with this relationship between God and persons. Indeed, nothing can be more important than respecting conscience because nothing can be more important than protecting an authentic relationship between God and individuals.

When Williams and later leaders in the founding era defended liberty of conscience, they focused on freedom for religious belief and worship. It is not clear that they would have extended liberty of conscience to the type of moral dissent that Smith addresses. Without any familiarity with the moral pluralism that characterizes modern American society, they did not squarely face the issue. Williams and those in the founding era agreed with their contemporaries about the content of morality.[74] Indeed, when Roger Williams observed that Christian and non-Christian alike agreed on the same basic moral principles, he concluded (as did other Puritans of his day) that conscience functions well in moral matters even without the special aid of revelation.[75] Aside from religious objections to military service (which Madison would have accommodated[76] but Williams would not have[77]), genuine dissent in seventeenth and eighteenth century America was limited to matters of religious belief and worship.[78] In such an environment,

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74. *See* Brady, *Reflections*, *supra* note 67, at 491-95; MORGAN, *supra* note 55, at 128.

75. *See* MORGAN, *supra* note 55, at 128.

76. When Madison introduced his initial proposal for the Bill of Rights in Congress in June of 1789, he included a provision that would have exempted those "scrupulous of bearing arms" from military service. ARLIN M. ADAMS & CHARLES J. EMMERICH, A NATION DEDICATED TO RELIGIOUS LIBERTY 17 (1990).

77. *See* PERRY MILLER, ROGER WILLIAMS: HIS CONTRIBUTIONS TO THE AMERICAN TRADITION 224-26 (1953) (excerpting and discussing Letter from Roger Williams to the Town of Providence (Jan. 1655), which can also be found in 6 THE COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 55, at 278).

78. *See* Brady, *Reflections*, *supra* note 67, at 491-95. Williams and those in the founding era could envision moral standards different from their own, but they did not encounter such standards often and viewed them as the aberrant beliefs of a few deviant individuals or groups, not as genuine moral diversity. *See* MORGAN, *supra* note 55, at 134-35 (stating that "though [Williams] did not specifically say so, Williams doubtless thought it incumbent on government to punish those Quakers who were led by the inner light to go naked in public, a practice that deeply offended Williams and that appeared to him to be condemned even by the unenlightened natural consciences of barbarians"); Brady, *Reflections*, *supra* note 67, at 494-95 (arguing

there was little need to protect moral dissent.

However, as Smith assumes, the reasons that Williams and founding-era figures gave for liberty of conscience in matters of religious belief and worship easily extend to moral issues in a morally pluralistic environment. For Williams and those in the founding era, moral rules are just as much a part of humanity's relationship with God as purely religious duties. Like purely religious duties, moral rules have their source in God's will, and conscience is the mechanism for apprehending moral as well as religious knowledge.[79] Thus, where genuine disagreement exists, force in matters of morality, just like force in matters of religious belief and worship, will undermine the individual's relationship with God. To coerce an individual to do what she thinks is morally forbidden is to force her to violate this relationship, and forced conduct, even if in conformity with the truth, cannot substitute for free obedience.

Indeed, the reasons that Williams and founding-era proponents of conscience offer for protecting conscience also justify respect for conscience where the dissenter does not recognize a divine source for her moral convictions. The voice of conscience connects persons to God even where the divine character of this relationship is not fully understood. The person who obeys conscience obeys the witness of God "written on the[] [human] heart."[80] Disobedience, by contrast, shuts out this witness. Forcing an individual to disobey sincerely held moral convictions weakens conscience and undermines this connection between God and persons.

At this point, my reader may raise an obvious objection to the power of this early American case for conscience. Whatever their persuasive force in the past, the religious assumptions embraced by Williams and those in the founding era do not ground a compelling case for conscience today. In modern America, many indi-

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that "[w]hile it was possible for those in the founding era to conceive of moral principles that diverged from settled opinion . . ., such principles were viewed as the deranged imaginings of deviant individuals or groups").

79. *See* MORGAN, *supra* note 55, at 128 (discussing Williams's thought). In the founding era, it was widely assumed that morality was a significant aspect of religion, and those in the founding era generally agreed that virtue was essential for the success of popular government and that religion was essential for morality. *See* Brady, *Reflections*, *supra* note 67, at 491-94.

80. *Romans* 2:15.

viduals no longer believe in God, and as Smith observes, moral objectivism itself is hotly contested. How can a defense of conscience based upon a religious account of moral objectivism and moral authenticity have persuasive force today? Are not conventionalist, subjectivist and nihilist defenses the only justifications with broad appeal?

In my view, the religious assumptions that Williams and founding-era defenders of conscience make cannot be so easily dismissed. Affirming that God is the source of objective moral rules and that we are created for a voluntary relationship with God is one way of describing a fundamental and ineradicable human experience. While the conventionalist, subjectivist and nihilist may claim that humans create their own meaning and rules, we do not experience ourselves as creator but as creature. We exist as part of a universe that we have not made and that we can only barely control. We also perceive an underlying order to the realities that confront us, and we seek the grounding and source of this order. We desire to know the meaning and purpose of the world and our place in it. Why, we ask, does the world exist and for what purpose have I been created? As we ask these questions, we find ourselves in relationship to this source or grounding of all that is – this transcendent and perhaps also imminent Reality that underlies and defines our experience. We also find that this relationship is fundamentally free. We seek to know and we have been created to understand, and understanding cannot be compelled but only informed. As Thomas Jefferson argued, "God hath created the mind free,"[81] and as Locke also explains, "such is the nature of the understanding that it cannot be compelled to the belief of anything by outward force."[82] There is always a gap between ourselves and the Reality we seek to know, and much remains a mystery. However, this mystery motivates us, excites us, beckons us and draws us in, and our understanding grows. Through reason and deliberative thought and investigation, through intuition and feeling, through the counsel of others and the teachings of the great religious traditions, our knowledge develops, and the rela-

81. Thomas Jefferson, A Bill for Establishing Religious Freedom (1779), *reprinted in* 5 THE FOUNDERS' CONSTITUTION 77, 77 (Philip B. Kurland & Ralph Lerner eds., 1987).

82. JOHN LOCKE, A LETTER CONCERNING TOLERATION 18 (Patrick Romanell ed., 2d ed. Bobbs-Merrill 1955) (1689).

tionship that we have been created for deepens through freedom.

Part of what we desire to know is how to live in proper relationship to the Reality that underlies our existence, and this is the field of morality. We have been made with a capacity to think in moral terms, to judge our actions right or wrong, not just advantageous or disadvantageous, wise or foolish, and it is in our moral actions that our relationship to the Reality that has created us and beckons us is lived out. We desire to do good and avoid evil, but we know that we do not define what is right and what is wrong. Rather, the very concept of good and evil is a gift as is the voice of conscience within us that judges right from wrong. As Christian tradition observes and teaches, "[i]n the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience."[83] In our pursuit of moral knowledge, we seek to understand the demands of conscience more fully. We seek to live in harmony with the Reality that speaks through conscience, and we seek to conform our actions to our created nature and purposes.

Western religious traditions interpret this Reality that speaks through conscience as a personal God who at once transcends the world that He has created and is also directly involved in it. Our ability to reflect upon our world and our place within it and our drive to understand its meaning demonstrates our fundamental openness and orientation to this personal God. We are created for communion with God,[84] and the questions that we ask are "the echo of a call from God."[85] The voice of moral conscience is the "messenger"[86] of a God who has written his law on our hearts,[87] and in our desire and capacity to understand our world and seek

83. SECOND VATICAN COUNCIL, GAUDIUM ET SPES: PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD ¶ 16 (1965) [hereinafter GAUDIUM ET SPES], *reprinted in* CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 166, 174 (David J. O'Brien & Thomas A. Shannon eds., 1992).

84. *Id.* ¶ 19, at 176.

85. POPE JOHN PAUL II, VERITATIS SPLENDOR ¶ 7, at 17 (Daughters of St. Paul) (1993).

86. CATECHISM OF THE CATHOLIC CHURCH ¶ 1778 (Liguori Publications 1994) (quoting John Henry Cardinal Newman, Letter Addressed to the Duke of Norfolk (1874), *in* 2 CERTAIN DIFFICULTIES FELT BY ANGLICANS IN CATHOLIC TEACHING 171, 248 (London, Longmans, Green 1920).

87. *Romans* 2:15; *see also* GAUDIUM ET SPES , *supra* note 83, ¶ 16, at 174 ("For man has in his heart a law written by God.").

beyond to its source, "we share in the light of the divine mind."[88] To be sure, sin separates us from the God we seek, and the judgment of conscience is clouded as is our understanding of other matters. Our fallen nature rebels against the voice of conscience even when it is heard. However, God discloses himself within revelation, and according to Christian belief, in the person of Christ. In Christ, we understand more fully that we have been created to know and love the God who has first loved us through the work of creation and the work of redemption accomplished for us on the Cross. In his suffering and death for us on the Cross, Christ demonstrates the depths of God's love for humanity, and we are invited to share in the divine life by imitating this love in our relationship with others. The radical example of Christ's sacrifice on the Cross sums up the moral law and provides the light for clouded conscience, and through God's mercy, we receive grace to obey that law with a willing heart. In the Cross, we discover the answer to our questions about the meaning of life,[89] and our restless hearts at last find rest.[90]

Not all religious traditions envision the Reality which grounds our existence as a personal God who is actively involved in the lives of his creatures, and for some traditions, this Reality may be more imminent than transcendent. However, all religious traditions address and seek to understand more fully our relationship to this Reality that is ever-present in our experience. The atheist may try to deny this relationship, but he cannot escape the questions that call him back.

Thus, the religious assumptions that Williams and other early American defenders of conscience make are neither outdated nor narrowly sectarian. They reflect the fundamental reality of human experience and the source of human dignity. We have been created to know and live in relationship to the Reality that has made us, and this relationship distinguishes us from all other created

88. GAUDIUM ET SPES, *supra* note 83, ¶ 15, at 174.

89. *See* VERITATIS SPLENDOR, *supra* note 85, ¶ 2, at 10-11; Kathleen A. Brady, *Catholic Social Thought and the Public Square: Deconstructing the Demand for Public Accessibility*, 1 J. CATHOLIC SOC. THOUGHT 203, 222-23 (2004).

90. Saint Augustine has written, "you have made us for yourself and our heart is restless until it rests in you." SAINT AUGUSTINE, CONFESSIONS 3 (Henry Chadwick ed., Oxford Univ. Press 1991) (397-400).

things. As the Psalmist says, "what is man that thou art mindful of him, and the son of man that thou dost care for him? Yet thou hast made him little less than God, and dost crown him with glory and honor."[91] Respect for this relationship between God and persons demands respect for conscience. Individuals must be permitted to seek truth in freedom and to act in accordance with their understanding of truth whenever possible. It is in our moral actions that our relationship to the Reality that has created us and called us to communion is lived out. Forcing individuals to do what they think is wrong strikes at the heart of this relationship, and when it does, it strikes at the foundation of human dignity.

91. *Psalms* 8:4-5.