

Reply: Continuing Conundrums

Steven D. Smith, Esq.

I. Conscience

There is a great deal in Father Koterski's informative paper with which I agree, and little or nothing with which I have any reason to disagree. Father Koterski argues that it is implausible to interpret Thomas More as someone who became an absolutist because of the frustrations of political failure, and it seems to me that he is right. Father Koterski gives a helpful exposition of the medieval and Thomistic understanding of conscience, and he argues that Thomas More subscribed to this understanding. As a non-specialist, I have no basis for doubting this account. Father Koterski suggests that much of what More did in the difficult years at the end of his career can be viewed as an effort to form the conscience of the king, and again, this suggestion sounds plausible to me.

Although what Father Koterski says in his paper seems to me acceptable and helpful, though, I'm not sure whether the paper answers the questions or dissolves the conundrums that I tried to identify in my own essay. So I want to briefly discuss what I take those puzzles to be, and why they persist, and why I think they are important.

At the outset, I should say something about my own perspective and qualifications (or lack thereof). I am not a More scholar, or even a historian. My field, from which I wandered into this topic, is the American law of religious freedom. In that field, something we call "freedom of conscience" has achieved almost axiomatic status, and indeed it is arguable that freedom of the individual conscience is at the center of modern liberal democracy in general. But it also seems to me that the *meaning* and *foundations* of this commitment are uncertain and problematic. Thomas More is a fascinating and inspiring figure in his own right, but for my purposes he is interesting because he was situated at the brink of the developments that have led to the modern commitment to freedom of conscience (whatever that is). And he was an exquisitely thoughtful and learned man—one who pondered the significance of conscience and who was willing to support his

judgments with his very life. So it seems that reflecting on what conscience meant to More might shed light on what conscience itself means and why it might be so important.

A good starting point is a portentous statement More made in a letter reporting on the initial interview at Lambeth Palace, just before he was consigned to the Tower, in which he refused to take the mandatory oath supporting the king's marriage to Anne Boleyn and, by implication, the nullification of Henry's marriage to Catherine and the actions declaring Henry head of the church in England. Famously, More declined to give any specific explanation of the reasons for his refusal except to say that they were reasons of conscience. But—and this is the crucial transition, I think, though by now it may be so commonplace that we scarcely notice it—More went beyond this less than revealing *explanation* of his refusal to suggest that because he was acting on conscience, the authorities ought to *defer* to his decision. In the matter of the oath, he said,

I never withdrew any man from it, nor never advised any to refuse it, nor never put, nor will, any scruple in any man's head, but *leave every man to his own conscience*. And me thinketh in good faith that so were it good reason *that every man should leave me to mine*.

Notice how More here goes beyond the somewhat similar assertion of conscience famously made by Martin Luther: "Here I stand; I can do no other." Luther's legendary statement is no more than an explanation, or an apology—albeit a feisty one—for his refusal to recant his controversial views. Luther indicates that, given his beliefs, he must do as he is doing, but he does not suggest (in this statement anyway) that *anyone else* therefore has any reason to respect or defer to what he is doing. More, on the other hand, asserts that he and his neighbors ought to respect each others' decisions, or at least to avoid interfering with them—he even seems to suggest that they should refrain from persuading or advising each other—at least in this matter and insofar as those decisions are grounded in conscience.

This is a crucial addition or advance, I think, and one that as I've said is central to modern conceptions of religious freedom and liberal democracy. So we should pause to appreciate the transition.

Start on the other side of the divide—with the assertion that people should act in accordance with conscience. This might be taken as a truistic, almost tautological, assertion. You and I ought to do what is right: that is arguably a merely analytical claim, because what is "right" is by definition what "ought to be done." That is part of what "right" means, arguably. But since we are finite and fallible thinking beings, as a practical necessity the assertion that you or I ought to do what *is* right almost inevitably reduces into the claim that you and I ought to do what *we believe* to be right. Or, in other words, we should follow the judgments of our conscience.

But conscience up to this point appears as a sort of concession to our limitations. If we were infallible or omniscient, the imperative could be limited to "Do what *is* right"; we would hardly need to add the part about doing what *we believe* to be right. Given our finitude, though, the addition about our beliefs about what is right—our conscience—becomes necessary. Still, this necessary addition does nothing to gain any *special sanctity* or *respect* for those beliefs—or any deference from those who believe our beliefs to be mistaken.

So if you are in a position to reprove me for wrong actions and I defend by saying “But I did what I thought was right” or “I acted from conscience,” it is not immediately clear why this defense should help me or persuade you-- any more than it should persuade you if you are paying off winning bets and in presenting my demand I explain, “I know Black Beauty finished last, but I sincerely *thought* he was going to win.” Or suppose a student gets the wrong sum on a math problem, and when the teacher marks the answer wrong the student defends with “But I sincerely, honestly believed this was the correct sum (and in fact I still do).” In each case, it seems that the apt response is: “Too bad. Maybe you did, or do, believe that. Unfortunately, you are wrong.”

More’s classic statement suggests a different conclusion. “I leave every man to his own conscience, and every man should leave me to mine.” More knows, of course, that at least some of those who are demanding that he take the oath believe his views on the matter are mistaken. Yet he suggests that even so, because he is acting from conscience, they ought to leave him alone. Conversely, he plainly believes that those who have demanded and taken the oath are mistaken, but he suggests that it would be wrong of him to interfere in their decision if they are acting on conscience.

Conscience has somehow been elevated from a necessary concession to our finitude into an ennobling feature that might be described as having “sanctity” and that deserves deference even when we are wrong. Consider in this respect a remark made by More to Richard Riche during the notorious interview in which, according to Riche’s later (perhaps perjured) testimony, More made the incriminating statements that were used to condemn him. Presented with the disagreement, More asserted, “Your conscience will save you, and my conscience will save me.”¹ Whether Riche was truly acting from conscience, or whether More truly believed he was, is very doubtful, of course, but even so, the remark suggests something about the efficacy that More seems to be attributing to conscience: acting in accordance with conscience, even if it is mistaken, has some sort of power to save.

II. *Thomas More and Conscience*

But how exactly does conscience become elevated from a sort of necessity—a concession to frail human beings who aspire to do what is right but can only act on our fallible beliefs about what is right—to some sort of virtuous faculty that is entitled to deference even from those who disagree with its judgments in particular cases—a faculty that may even have the power to “save” those who exercise it even when they are mistaken? That is a hard question, I think, and attempting to understand More, a champion of conscience, might just shed some light on the question.

“Might.” And yet, reflections on More and his understanding of conscience provoke some challenging questions, I believe, and these were the subject of my essay. There were three questions, or sets of questions. First, even conceding that More believed the oath was mistaken and that he would be endorsing falsehood by taking it, still, why did he feel compelled to refuse the oath and suffer execution

when many others (including his own family) not only swore but pleaded with him to swear as well? Second, how can we square More’s professed respect for conscience with his active persecution (sometimes to the death) of Protestants who would appear to have been acting on conscience and who were sometimes willing, like More, to suffer imprisonment, humiliation, and painful death for what they believed? Third, why did More refuse to explain more fully his reasons for refusing to take the oath, and indeed refuse to instruct and persuade his own family in those reasons so that, like him, *they* might decline to swear to a momentous falsehood? There may well be answers, but I confess that I don’t see how the illuminating explanation that Father Koterski has given about the medieval conception of conscience responds to *these particular* questions.

I don’t want to go through the full discussion in the essay, but let me try to explain the general difficulty in this way. Thomas More’s conception of conscience, and his actions generally, would seem to reflect a preeminent commitment to truth, and truthfulness, over other goods and duties. Probably, More didn’t subscribe to any *absolute* duty to tell the truth, in the way Kant and St. Augustine are said to have done. He was after all a lawyer and diplomat, and lawyers and diplomats generally don’t have the luxury of such unqualified scruples. But More seems to have regarded the duty of truthfulness as at least very important—important enough to justify refusing to take an oath that he believed to be false even at the cost of his life, and even at the expense of rendering himself unable to perform other duties, such as the duty to serve his king and to provide for his family. His contemporaries who reproached him for what they perceived as his stubbornness evidently believed he was grossly miscalculating the weight of these competing goods and duties.

It also seems that More believed he owed a duty to God to stay alive—to stay at his post, perhaps—until God might choose to relieve him of this assignment. I can’t vouch for this conclusion, but a Jewish friend of mine tells me that in Jewish law, the duty to maintain life would prevail over the duty to tell the truth—so that a person who chose truthfulness over life would be making a morally incorrect choice.

So why did More place such inordinate weight on the duty not to commit falsehood in this particular situation? I don’t have any complete answer. But however we answer this question, it seems clear that for More, conscience was closely related to the importance of truth, and of telling the truth. I doubt that More would have disagreed with this proposition; he would probably have regarded it as obvious. In this respect, his conception of conscience seems unlike some modern versions that link conscience more to individual self-determination than to truth.

This proposition about the crucial connection of conscience to truth is at least part of the answer to the first question—why did More refuse to take the oath?—and it is likely part of the answer to the second question as well. In other words, More no doubt persecuted Protestants because he believed their distinctive doctrines were not true, and were indeed subversive of truth. This observation can only be part of an answer to the second question, I think, and it raises some difficult questions that I am going to pass over here in order to get to the third question, where I think a serious tension that is at the heart of conscience most clearly appears. If truth is so important, that is, then why did More refuse to explain the truth in this matter, not only to those who were prosecuting him but to his own family? Why did he stand by and allow them to take an oath he believed to be false without at least trying to carefully explain and persuade them of the truths upon which he himself

¹ Marius, p. 501

was acting?

The problem here, I think, is not to come up with an explanation of why More might do what he did, but rather to devise an explanation that is consistent with the preeminent value of truth and the duty of truth-telling. In other words, it is easy to understand why More might have wanted to remain silent on this matter. Silence is not dishonesty, and it is also not treason; or at least so he argued. So for himself, silence was part of a strategy of avoiding treason, and hence of self-preservation. And for his family, More might have thought that they could take the oath and hence avoid his own fate, and yet be innocent of moral transgression—but only so long as they did not fully understand the reasons why the oath involved a deep falsity. They enjoyed the moral immunity that comes with ignorance. We can easily understand this motivation, I think. Or at least *I* can: I myself have often tried to preserve my own ignorance for similar self-protective reasons.

So if this was More's motivation, it is surely understandable. But the difficulty is in squaring this reasoning with the preeminent value of truth, and of truth-telling. If truth is so important, wouldn't More's family have been better off if they had known the truth—even though this might have prevented them from taking the oath and thereby have led to punishment? To put the point differently: this explanation suggests that More believed his family was better off *not* knowing the truth. *He himself* might have been better off if he had remained ignorant—if he had never really looked into the propriety of the divorce, for example, and thus could innocently support it. His misfortune was in understanding the truth—in possessing the very thing which according to the New Testament sets us free and according to Aquinas is our highest good.

I think this is at least a very paradoxical position, and it points to a tension in the very concept—not of conscience, maybe (as Father Koterski has expounded it), but of *freedom* of conscience, or of any position which exalts *respect* for and *external deference* to conscience. Put it this way: conscience is linked to truth, we have said, and the value of conscience lies in the preeminent value of truth; and yet freedom of conscience serves precisely to accord dignity and respect to beliefs we believe to be erroneous. We don't *need* to appeal to freedom of conscience with respect to people whose beliefs we think are correct. We need it only for people whose beliefs we think are false.

It is hardly too much to say that the whole function of freedom of conscience in law and politics is to protect the right or ability of people to hold false beliefs. Writ large, the doctrine becomes a device for keeping government detached from and neutral toward issues of truth. This is surely the effect of the doctrine in modern law and theory—in First Amendment doctrines, for example, or in the influential theorizing of John Rawls and like-minded thinkers. One suspects that More would have deplored this separation of law and government from truth. And yet, it is arguable that this modern liberal stance is a sort of generalization of the strategy More himself adopted toward his own family and friends when he refused to explain his reasons for refusing the oath—when he determined to “leave every man to his own conscience” and to refrain from “advis[ing]” or putting “any scruple in any man's head.”

So it is arguable that the effect of “freedom of conscience,” as it has played itself out, has been to detach government, law, and politics from truth. But that seems a peculiar function for a doctrine grounded, as we said a moment ago, in a

commitment to the preeminent value of truth. And it seems strange to conclude that Thomas More, a man who fought literally to the death for the truth and, we might say, to preserve a political place for true doctrine, should (by so frequently and eloquently standing on an appeal to “conscience”) have served to usher in an era that can almost be defined by its fierce commitment to what turns out to be at its core a detachment from truth and a right to believe what is not true. That is what, to me, remains the mystery of More's position and the continuing conundrum of freedom of conscience.