

RESPONSES AND DIALOGUE

## Kantian Conscientious Objection: A Reply to Kennett

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In her paper, “The cost of conscience: Kant on conscience and conscientious objection,” Jeanette Kennett argues that a Kantian view of conscientious objection in medicine would bar physicians from refusing to perform certain practices based on conscience. I offer a response in the following manner: First, I reconstruct her main argument; second, I present a more accurate picture of Kant’s view of conscience. I conclude that, given a Kantian framework, a physician should be allowed to refuse to perform practices that break the moral law and, thus, refuse practices that violate her conscience.

Kennett claims that “it is Kant’s discussion of the clergyman with doctrinal disagreements that is most relevant to conscientious objection in healthcare settings, and that is where his position becomes clearest.”<sup>1</sup> Since this text is most central to her analysis, I focus on reconstructing her argument using this example. She uses the following passage from Kant as clear evidence for this claim: “...a clergyman is bound to render his service to his pupils in catechism and his congregation in accordance with the symbol of the church that he serves, for he has been accepted into his position under precisely this condition.”<sup>2</sup> The clergyman is not permitted to refuse to teach church doctrine because, if he were to do so, he would fail to fulfill the professional duties his role requires. Such a clergyman, Kant suggests, should resign from his role; professionals cannot refuse to provide services integral to that profession. Kant mentions, further, that the clergyman should resign precisely *because* he could not fulfill his duties in good conscience: “if he believed to find such a contradiction therein, he would not be able to execute his office in good conscience and would have to resign from it.”<sup>3</sup> In this example, the clergyman’s conscientious objection to teaching certain doctrinal tenants do not license him to refuse to provide the services essential to the profession.

Given this brief review of her work, I take Kennett to endorse the following view:

- (1) If one must perform an action required by her professional duties, then she must act against her conscience. (Kant’s example of the refusing priest in *What is Enlightenment?*)

To begin my response, I follow Samuel Kahn, Thomas Hill, and Owen Ware on Kant’s definition of conscience.<sup>4</sup> According to them, Kant defines conscience as the capacity to (1) judge whether or not one has broken the moral law and (2) judge whether the agent “actually has undertaken the former evaluation of actions with all diligence” as to whether or not the action was morally permissible.<sup>5</sup>

Using this functional definition, I focus on Kant’s discussion of conscience in the *Second Critique* which, I claim, provides a novel insight into one’s correct judgements of conscience and whether or not she has in fact broken the moral law.<sup>6</sup> He writes:

A human being may use what art he will to paint some unlawful conduct he remembers as an unintentional fault—as a mere oversight which one can never avoid altogether, and so as something in which he was carried away by the stream of natural necessity—and to declare himself innocent of it; he nevertheless finds that the advocate who speaks in his favor can by no means reduce the silence the prosecutor within him...<sup>7</sup>

There are two important details of the passage above: First, Kant notes that this person's actions constituted "unlawful conduct": she has *in fact* broken the moral law. The person who has performed the action that broke the moral law remembers his conduct as an "*unintentional fault*." This phrase demonstrates that this individual recognizes that she has broken the moral law, even if she was compelled by "natural necessity," where I take "natural necessity" to mean something like: it was *as if* she could not have done otherwise.

Second, the person who breaks the moral law in this instance *correctly judges* that she has broken the moral law. Since she has recognized that she has broken the moral law, the prosecutor, which is Kant's analogy for one's conscience, firmly judges that she has in fact broken the moral law regardless of her excuse that it was as if she could not have done otherwise. Something particularly telling about this passage is that, no matter what the transgressor of the law tries, she "can by no means" silence her conscience. In other words, one's conscience will always convict her of her immoral action when she is aware that she has broken the moral law. It is in this type of situation—where one correctly judges that she has broken the moral law—in which one cannot "silence the prosecutor within him."

As a result, this passage gives a unique insight into Kant's understanding of the relationship between one's *judgment* as to whether or not she has broken the moral law and whether she has *in fact* broken the moral law. The relationship is this: it is in cases where one's conscience *correctly judges* that she has broken the moral law that she has *in fact* broken the moral law.<sup>8</sup> This view can be summarized as:

CONSCIENCE: If one (1) *correctly judges* that performing some action will break the moral law, (2) judges that reason leads to the first judgement, and (3) performs that action (i.e., acts against her conscience), then she has broken the moral law.

Given CONSCIENCE, it becomes more obvious that Kennett's argument is not an accurate representation of Kant's understanding of conscience. In Kant's framework, it is *always* impermissible to break the moral law. Therefore, if one's professional duties require her to break the moral law, then she need not fulfill those duties. Succinctly, here is my response to Kennett's claim:

- (2) If one (1) *correctly judges* that performing some action will break the moral law, (2) judges that reason leads to the first judgement, and (3) performs that action (i.e., acts against her conscience), then she has broken the moral law (CONSCIENCE).
- (3) It is impermissible to break the moral law (Kant's theory of morality).
- (4) Therefore, it is impermissible to act against one's conscience.

(4) entails that (1) is false. Recall that premise (1) states: If one must perform an action required by her professional duties, then she must act against her conscience. On a Kantian framework, given the antecedent of (1), the consequent does not follow. The consequent does not follow because, if she were to act against her conscience, then she would break the moral law. Thus, if (1) were true, then Kant's theory on refusals would require that people break the moral law. Yet, breaking the moral law is always impermissible. Therefore, (1) is false and Kennett's argument fails; it is not faithful to the Kantian framework.

This view entails that a Kantian framework of conscientious objection would allow medical professionals to refuse a service based on conscience only when one's conscience has correctly judged that providing such a practice would in fact break the moral law. I think the case can be made clearest with physician-assisted suicide, and will use Oregon's famous Death with Dignity Act as a prime example.<sup>9</sup> In that state, physician-assisted suicide is a legal practice and part of the professional responsibilities of the physicians within Oregon.

Kant's famous argument against suicide in the *Groundwork* can be slightly modified to rule out physician-assisted suicide.<sup>10</sup> In the case of physician-assisted suicide, one would will the maxim:

Medical suicide: From self-love, I make it my principle to shorten my life by medical means when by longer term it threatens more ill than it promises agreeableness.<sup>11</sup>

This maxim is then universalized:

Universal medical suicide: From self-love, all people will make it their principle to shorten their lives by medical means when by longer term it threatens more ill than it promises agreeableness.

He argues that this universalized maxim is contradictory, that is, violates the categorical imperative. In the *Second Critique*, Kant defines the principle of self-love as that principle which makes happiness the sole determining ground of the will.<sup>12</sup> In other words, an agent acting on this principle will choose those actions which make her life most agreeable to her. Implicit in this principle is that life is a *necessary condition* for agreeableness; if one is not alive, then nothing is agreeable or disagreeable to her. To act on the principle of self-love presupposes a continued existence, so it is unintelligible to claim that one takes her life out of self-love. Therefore, the universalized maxim is directly contradictory to the principle of self-love. The universalized maxim results in a contradiction in conceivability, and therefore violates the moral law.

Thus, a physician would have, in acting against her conscience, broken the moral law because her conscience would be correctly judging that the moral law would be broken by performing that action. Conscientious objection in a Kantian framework would allow physicians to refuse practices which break the moral law; one example of such a practice is physician-assisted suicide.

## Notes

1. Kennett J. The cost of conscience: Kant on conscience and conscientious objection. *Cambridge Quarterly of Healthcare Ethics* 2017;26:69–81.
2. Kant *E* 8:38.
3. See note 2.
4. Kahn S. *Kant's Theory of Conscience*. Cambridge Elements: The Philosophy of Immanuel Kant. Cambridge: Cambridge University Press; 2021; Hill T. Four conceptions of conscience. *Nomos* 1998;40:13–52; Ware O. The duty of self-knowledge. *Philosophy and Phenomenological Research* 2009;79(3):671–98. For a similar view, see Paton JH. Conscience and Kant. *Kant-Studien* 1979;70(3):239–51.
5. See note 4, Kahn 2021.
6. Another example is found in a passage in the *Reflections*, where one is asked to imagine a situation in which she is forced to either worship an idol, thereby violating her conscience, or offend those who believe in that idol's divinity. Concerning this case, Kahn writes: "According to the notes, the lesson that the students are supposed to learn from consideration of this case is that it is always wrong to act against conscience, even if this means causing offense to others, for my conscience 'must be holy to me'" (see note 4). In other words, this example is meant to demonstrate that, had the person acted against her conscience, she would have broken the moral law.
7. Kant *CPrR* 5:98.
8. There is a debate about what Kant means when he claims that conscience cannot err (see note 4). As many Kant scholars note, this infallibility only applies to one's *judgement* as to whether or not she has broken the moral law. Conscience does not determine whether one has *in fact* broken the moral law (Timmerman J. Kant on Conscience, Indirect "Duty," and Moral Error. Sicker M. When the reflective watch dog barks: Conscience and self-deception in Kant. *Journal of Value Inquiry* 2017;51:85–104 disagrees that conscience can be infallible even in this more limited sense supported by Timmerman, Hill, Kahn, and Ware [see note 4]). This result follows from the fact that agents can be mistaken about whether not a particular action is a duty. CONSCIENCE avoids this debate entirely. I am *not* claiming that conscience is infallible; rather, I am claiming that, when one's

conscience *correctly judges* that one would break the moral law if she were to perform some action, then she would *in fact* break the moral law by performing this action.

9. THE OREGON DEATH WITH DIGNITY ACT OREGON REVISED STATUTES, 127 ORS (2019).
10. Kant G 4:422.
11. See [note 10](#).
12. Kant CPrR 5:22.