

The place of conscientious objection in liberal democracy

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1. In this presentation I intend to raise two questions: first, is there any place left for conscientious objection in liberal democracy? Second, if there is any, which claims to conscientious objection (CO) can be accepted? The two questions, taken together, concerns the problem of the justification of CO. The answer to the first question will show that, despite contrary appearance, there is indeed some room, albeit interstitial, for CO to be raised. However, finding some room for CO within the framework of liberal democracy does not *ipso facto* provide a justification for it. Quite the opposite: the argument in fact shows that no proper justification can be put forward for CO in general. Yet, given its general commitment to religious liberty and freedom of conscience, liberal democracy is uneasy to reject CO altogether. But then further argument is needed to show which qualifications can make CO claims more or less acceptable. The answer to the second question is meant to single out qualifications which, while add normative strength to CO claims, also account for actual political decisions to grant or withhold them.

2. I shall start with a definition of CO from which I can then spell out its general justificatory problem and make sense of the first question. In general, the expression means the refusal to comply with a specific legal rule, because the latter, literally, goes against one's conscience, that is, is doomed to contrast with one's deep religious or moral convictions. It is important to stress that CO is not simply a form of dissent or protest against some norm, which in liberal democracy is supposed to be a fundamental right and a constitutive part of the political system where government is necessarily checked and criticized by the opposition. CO, together with civil disobedience (CD), is in fact a specific form of resistance to the political authority: as a matter of fact, CO and CD represent the only kinds of political resistance which are in principle admissible in a liberal democratic regime. On the one hand, they are not simply forms of protest, because they usually imply some law infringement; on the other hand, they are also presented as types of internal and loyal resistance, since they are not meant as a global rejection of the political and legal order as a whole, but only of some specific norm or set of norms. Besides, they exclude violence as a legitimate means. So, being localized and non-violent forms of resistance they are sharply set apart from revolution. Moreover, their advocates, as a rule, are prepared in either case to accept the sanctions which befall them as a consequence of breaking the law. To sum up, both CO and CD are open, loyal, non-violent, limited and localized forms of political resistance.¹ Because of these characters, it is claimed that they are forms of acceptable resistance which apparently deserve to be taken seriously in order to see whether they can be justified within the framework of liberal democratic politics. There is however a remarkable difference between CO and CD, which makes for different justificatory strategies.

Civil disobedience raises the issue of the unjust law within a political and legal order recognized as legitimate and on balance almost just. There is in fact a divergence in this respect between the more traditional position by John Rawls and the one held by David Lyon. Rawls presents the problem of CD in the framework of (a) the natural duty and obligation to obey the law, (b) in a nearly just society.² Civil Disobedience is then an exception to the obligation to comply which can be justified by the presence of unjust laws and corresponding public behavior, under well specified circumstances. Within such limits CD can work as an element supporting the well-order society, in the

direction of a more complete justice. Lyons instead views CD as independent from political obligation, which cannot be granted generally, and as a form of resistance to a whole system of injustice for a general change.³ In this contrast, though, the main point concerns political obligation, that is, whether a *specific* duty to obey the political authority does exist and bounds citizens to compliance or whether there is only a *prima facie* obligation for reasons which are not specific.⁴ It may be necessary to have a specific view of political obligation in order to consider CD as a justified exception, but here we can ignore this issue and stick to Rawls' more traditional view for another reason: under Lyons' interpretation CD is no more a form of internal and localized resistance, but, in this way, it is conflated with revolution. It is only a different (non-violent) method to bring about revolution. And even assuming Lyon's viewpoint, there is the problem of the basis of the primary judgment of injustice leading to CD. It seems that, in any case, an underlying conception of justice is necessary.

Thus, we are back to the link between CD and justice, which implies that the argument backing CD refers to public reasons, to shared principles of justice.⁵ Its advocates want to find as much consent as possible on their initiative, hence usually organize highly symbolic collective acts of disobedience to get publicity and support. Their final goal is legal reform of the allegedly unjust norm (or of the unjust order), hence their argument is framed in terms of public reasons which in principle are to be shared by all fellow citizens, and their illegal action is collective and public. For example, you might recollect the public tearing into pieces of the draft cards during the Viet-Nam war in the US, on the basis that that war was unjust; another case of CD is the way in which the women movement organized the campaign against anti-abortion law in Italy in the Seventies, by means of a public collection of self-accusation statements for the crime of abortion, meant to point out that abortion was in fact not a crime, but a painful event in most women's lives.

By contrast, conscientious objection does not raise the problem of the unjust norm, but, rather, of the conflict between a legal norm and one's conscience; consequently CO does not result in a collective action of disobedience, but usually consists in an individual omission in order to preserve one's conscience's integrity against political reasons. In other words, CO is backed by moral reasons which are not included among principles of justice and fundamental political values, that is, are not included in the area that Rawls would call "the overlapping consensus".⁶ I know that Rawls' distinction between reasons which are public and reasons which are not is controversial, and rejected by many scholars who nevertheless present themselves as liberals and democrats. I do not intend to engage here in a proper discussion of public reasons which would take me far from the main concern of this paper. I think however that a loose, non-technical distinction between reasons which are a) relevant to political decisions, b) common or sharable by anyone, and reasons which are either agent-dependent or dependent on premises which are not, and possibly can never be, shared by all cannot be contested as a matter of fact. This distinction does not imply the two very controversial claims imputed to Rawls' *Political Liberalism*. Namely, that non-public reasons should be kept off public discourse, and that they should not motivate citizens to act and choose *qua* citizens. Whether these two claims are legitimate and are legitimately attributed to John Rawls, is a matter which goes beyond the scope of my present argument.⁷ Nevertheless, the distinction between reasons which are now commonly shared and ground political principles and rules, and reasons which are not shared (not at present at least) and maybe never sharable is beyond dispute, being simply a fact of democratic politics. At present, I will not get into the discussion on whether it is the presence of a specific normative property, and conversely, its

lack that makes a reason public or whether that depends on contingent facts. Nor will I ask how come a reason, which is universalizable in its nature, may turn up to be non-public. In this paper I shall confine myself to a descriptive and pragmatic distinction between public and non-public reasons. These latter cannot be accepted as *just* grounds for breaking and changing the law; and they are precisely the ones referred to in CO claims. At this point, the justification of CO appears much more difficult than the justification of CD, which can cash out from public reasons. What is instead the basis for CO? Can conscience, as a set of private or non-public reasons, provide adequate grounds for accepting law exemption?

3. Before answering these questions, though, I like to pre-empt a potential misinterpretation about the justification of CD. The fact that CD claims to be grounded on public reasons of justice, in principle open to everyone's scrutiny, does not make CD an easy matter to be raised and to be acknowledged as justified. Within democracy, usually, dissent and protest take different routes; the costs of CD are much higher for dissenters and for the public order; hence, the reference to justice is not sufficient; only under special circumstances, CD turns out to be justified instead of usual and legal forms of protest.⁸ Moreover, if CD is justified and successful, then legal reform will follow, leaving no room for disobedience. In other words, CD cannot be legally acknowledged as an acceptable form of behavior leading to an exemption to the general duty to obey the law; the success of CD is precisely in making itself superfluous by means of a law reform.

In the case of CO, by contrast, the legal system is less pressed because it is not confronted with a collective act of disobedience demanding the reform of the allegedly unjust norm; the point of CO is individual exemption which is easier to accommodate in the legal order. However, the justification being in terms of non-public reasons, the case is in principle more difficult to be adjudicated. As I shall argue below, the contrast between law and conscience does not provide a general justification for CO; nevertheless, there are reasons to accept well qualified CO claims. If well qualified, a CO claim will not lead to legal reform, but to the recognition of a legal exemption to the norm for which CO is raised. The problem of justification of CO is thus strictly intertwined with that of its legal acceptability.⁹ For, well grounded and qualified CO claims can be embodied in the legal order and granted as legally accepted acts of refusal, while acts of CD can never be acknowledged and granted as legitimate forms of law breaking. Acts of CD are either treated as legal infringements with their corresponding sanctions, or recognized as well grounded and transformed into a legal reform.

To make things more complex, it should be noted that CO claims are often raised against a law which the claimant considers unjust, and, because of that, in conflict with her conscience's imperatives. It is from outside, and ex-post, that the claim can be clearly seen and judged as grounded either on reasons of justice or on reasons of conscience, and sorted as an instance of CD or of CO. For example, health care providers who believe that abortion is a crime, hence unjust, would like the law to be changed and its injustice repaired, and opt for CO as a second best when their pro-life convictions fail to be recognized as public reasons. To sum up, while in theory we can draw a clear line between CD and CO, both in terms of their grounding reasons, whether public or not, and in terms of their goals, be it law reform or individual exemption, in practice, such line is often traceable only ex post. The claimants often argue against the injustice of that law, and it is up to liberal institutions and public discussion to assign the

grounding reasons either to justice or to conscience, hence to consider whether the claim is an example of CD or CO, and should lead to legal reform or to exemption, or instead considered altogether unjustified and rejected.

4. Coming back to the question of CO circumstances and justification, one must first step back and focus on some crucial features of liberal democracy from which we can infer what is the proper place for conscience in the furnishing of the liberal world, so to speak. Liberalism came into existence, both historically and conceptually, in strict connection with the principle of toleration which provided a successful way out of the religious wars of the Sixteenth and Seventeenth Century.¹⁰ Toleration made it possible the coexistence of harsh religious disagreement with law and order within the same political unit. Despite the variety of arguments for toleration, which I am not going to rehearse here, its fundamental working for peace and civil coexistence exhibited a common pattern. It basically consisted in a strict demarcation between matters concerning the political order and public affairs, on the one hand, and, on the other, matters unrelated to political matters, among which primary were religious convictions. This demarcation divided society into two areas: the first constituted the political sphere, a domain subject to the political authorities and public regulations: the second, concerned with issues that were irrelevant to order and peace, defined the private realm as one in which the state had no business, hence no reason to intervene with coercive action. This protected area, where political interference was to be suspended, constituted the proper domain of toleration. Thus the principle of toleration relied on, and work through, the public/private divide, and, as a result, had a double effect: it created protection against state intervention in matters of faith, and it circumscribed religion within a politically neutralized area, the private realm of conscience, hence preventing churches and religious movements from interfering with political decisions. The political neutralization of religion, i.e. its privatization, did not originally entail the religious neutralization of politics: in the seventeenth and eighteenth century the absolute state did not need to be secular in order to be tolerant. It is only when in the liberal state the ideal of toleration becomes generalized and constitutionalized in the universal right of free conscience that the idea of a religiously neutral state could be advanced. And neutrality represented an expansion of the constraints that toleration has imposed on government's action. While toleration is the suspension of the political power of interference in individuals' religious and moral views, neutrality means not favoring any one set of such views, or their holders, over others in the public sphere. Whereas toleration simply removes some areas, declared as private, from the domain of legitimate government intervention, neutrality provides a positive guideline for public action so as to prevent politics to adopt any religious, or otherwise morally controversial, position and stand. With reference to citizens, then, while toleration grants them the freedom of conscience, within the boundary of the harm principle, neutrality grants them the right not to be discriminated against, because of their conscience.

The story is in fact much more complicated, and especially the ideal of neutrality has been under constant attack in the last twenty–twenty five years, as inconsistent, unattainable, undesirable, even within liberal theory itself. However for the purpose of the present argument we can avoid meddling with such complications and stick to the simple and common sense view of liberal democracy as the political arrangement where all citizens are granted equal right of free conscience and of non–discrimination because of their conscience, within the limits of the harm principle.¹¹

5. Given this framework, it is far from clear that in such a society a case for conscientious objection can stand. We have that conscience has found its proper place in the private sphere, outside, and protected from, political and third party interference; all that pertains to conscience, as a rule, is left to individual choices, or so it should. If, however, personal moral convictions engender conduct which has detrimental effect on other persons' rights, then the political authority ought to intervene in order to protect third party's rights. If, for example, some religious sects practice human sacrifice, they cannot claim the exemption from the prohibition against homicide, on the basis of religious liberty, no more than pedophiles can put into practice their sexual preferences on children. The limit to what is tolerable has always been fixed in the harm principle, and though what counts as harm is often controversial, infringements of other people's rights are clear cases of harm to others. But then it seems that the room for conscientious objection is nowhere to be found: between personal liberty and the dutiful protection of citizens' rights, there is no room for conscience considerations as grounds for law's infringement. If freedom of conscience is a constitutional right, how come that there are norms violating this right? And if there were, we would have a case for CD. What are then, if at all, the conditions for CO?

6. We must consider that the public/private distinction does not always succeed in assigning all matters in a clear-cut manner to either side. And that happens both because personal convictions engender conducts which affect other people or involve self-harm, and because legal predicaments have effects on individual lives and their convictions. Usually, such cases constitute the stuff for contemporary questions of toleration: when individuals or groups find that some pattern of their religious or cultural behavior, as a result of rules for public order, safety, propriety and so on, is forbidden (e.g. the well-known case of the hijab at French state schools) usually contest the prohibition as intolerant, and do not claim conscientious objection, i.e., private non-compliance, but toleration as recognition to their right of equal liberty. Similarly, when individuals or groups find that some regulations prescribe behavior which allegedly impairs their religious liberty, as it happened few years ago in Italy when the election day was fixed during Passover, they claim that the regulation is an instance of intolerance, being discriminatory of their religious liberty; hence, referring to the principle of toleration, they demand it to be changed. Cases of toleration are those which a) can be argued on the basis of the universal right to equal liberty and equal treatment, and b) contest political dispositions which i) either *unnecessarily* exclude or restrict individuals and groups from the exercise of fundamental rights, i.e., without sufficient justification; ii) or regulate matters which can, hence should, be left to the individual choice since no harm to third party or to the political order is produced. The hijab case belongs to this latter type of questions of toleration, while the change of the election day, because of coincidence with Passover, exemplifies the first type.

Also CO cases refer to the universal right of religious freedom, but they do not qualify for toleration because they concern matters which cannot be left to individual choice for reasons of order, security and general interest. For example, a political community has the right, and duty, to organize its self-defense; and if it has democratically decided for a conscription army, citizen's convictions on this point cannot simply be left free to guide the conduct of drafted individuals. Similarly, the access to many professions is publicly regulated by exams and licenses; more so in countries where professionals have the role of public officials in State agencies (Public education, public health system, and so on). Hence which services to provide and to whom cannot be left to professionals' individual choice

and convictions, but it must conform to general rule for the public interest. These are precisely the areas where occurrences of moral conflict cannot be sorted out with recourse to toleration and to individual freedom; considerations of general interest, security and order prevents this familiar solution.¹² In such cases, the alternative solution might be individual exemption for conscientious reasons.

Summarizing there are circumstances where the legal predicament is definitely legitimate, concern matters of public interest, is consistent with the sense of justice and public reasons of the society, but nevertheless conflict with the religious convictions of some people, convictions which do not imply behavior directly violating others' right (as it is in the hypothetical case of human sacrifice) and yet have some detrimental effect on the public good or on some people's prospects. I hold that the very possibility of a CO claim is to be found in the discontinuity between liberal political legitimacy, based on justice and public reasons, and individuals' comprehensive world views and religious beliefs. Such discontinuity is implicit in the political solution which has been given to religious conflict, via toleration, which is from where we started. Though the partition between private morality and public reasons can find reconciliation, at least sometimes, as Rawls suggests in *Political Liberalism*, nevertheless it is always possible that there be strong personal convictions which somehow collide with legal rules. In order to have a case of CO, two conditions must obtain. *First*, the contested legal rule is to be backed by a sound and neutral justification; otherwise, if it unnecessarily constrains someone freedom, the rule is intolerant and should be changed for reasons of justice.¹³ By contrast, if the rule is justified, despite its side-effect of interfering with some individuals' conscience, it cannot be said to be intolerant or unjust. *Second*, the rule infringing behavior should not involve direct right violation, but only have some detrimental effect on order and on some other people's prospects. These are precisely the circumstances giving raise to CO claims.

Typically conscientious objection has been claimed against military draft which some has rejected on the basis of an uncompromising religious commitment to non-violence. In such a case, if CO is finally granted to pacifists, it turns out to be located in the residual space for tolerance in its original meaning of suspension of coercive power for special reasons, under given circumstances, and based on a discretionary decision. A meaning that tolerance lost when it was transformed in the universal right to free conscience as Thomas Paine has vividly underlined.¹⁴

When the exemption is eventually granted, then one can say that, in that instance, the right to CO has been legally acknowledged. This fact corresponds to what is written in the European Charter for Human Rights. Affirming the right of "freedom of thought, conscience and religion" (n.10), the Charter specifies in comma 2 that "the right of conscientious objection is recognized in accordance with the national laws governing the exercise of that right". Such formulation means that there is no general right to CO and that the CO claimant cannot appeal to the European Court of Justice if her claim is not granted, because it is up to national parliaments and courts to decide, on a case by case basis, whether to grant or reject the request.

7. Now that we have sketched the circumstances for CO, we have still to understand what makes a CO claim acceptable. Given that, by definition, the test of justice cannot be passed, can the reference to conscience be enough? In general it cannot, given that there is a fundamental reason for discounting conscience in public life. There is a generally political problem about conscience which Locke was already well aware of. In his *Letter on*

Toleration, Locke does not argue that conscience should not be violated because of its intrinsic value, or because it is the only and true source of morality for individuals; rather the argument for non-interference is negative, and derives from the acknowledgment that coercion is useless as far as conscience is concerned. Thus, his argument for toleration is not based on the defense of free conscience; but, on the contrary, freedom of conscience in matter of faith is derived from toleration, that is, from the fact that beliefs cannot be created at will, hence cannot be imposed by an external power. In other words, imposition is unreasonable, and the content of conscience cannot be coerced. Therefore conscience must be left free, at least as far as conscientious acts do not interfere with reasons of political order. If this is Locke's main argument in favor of toleration, and if, from this argument, freedom of conscience is derived, it does not follow that conscience is left free to inform behavior in civil society.¹⁵ Locke is well aware of the disruptive effects of conscience if it is assumed as the guide of social and political action, given that each conscience claims to hold the true way to salvation. Moreover, Locke states that the magistrate, when exercising civil duties, ought to bracket his personal conscience in order to handle public matters, especially when controversies need to be settled. Locke is very clear, though brief, on this point which will later be dealt with properly by Kant, in the essay *Answer to the Question: What is Enlightenment?*, and we can see that this remark constitutes the original core and the *raison-d'être* of the idea of public neutrality.¹⁶ To sum up, freedom of conscience is a fundamental liberal principle, but only with reference to individual life and choices. In the public sphere, because conscience is presented as final, and escaping rational scrutiny and public discussion, it does not seem a suitable guideline of conduct in the public arena where different consciences may clash and where behavior has consequences on others and on the institutional arrangement as a whole. And yet, because coercion of conscience is held unreasonable, unjust and wrong to the moral outlook of liberal democracy, liberal theory is unwilling to do away with CO, notwithstanding its difficult position in liberal politics.

8. The argument so far has shown that, though there is some space for raising CO claims, a general justification for them is not available. But given the liberal commitment to freedom of conscience, if CO claims find some further qualifications than conscience, then reasons in favor of special legal exemption may be pointed out and, if that is the case, legal acceptance can follow. In general, legal acceptance of CO implies two risks for political stability. The two risks are free-riding and slippery slope. First, how are we to ascertain that the claimant is sincere and not merely trying to avoid his/her fair share in legal obligations? Second, if John's refusal is granted, then it is a precedent for other claimants, and not just for that norm, but for any, if John's claim is accepted on the basis of his conscience. And this would pave the way for a slippery slope of legal transgressions, threatening the equality of all citizens in front of the law, granting someone with legal immunity which cannot be justified to all others by reasons of justice. The first problem, that of free-riding, can be overcome by posing extra cost on the objector, as a proof of his/her sincerity and good will, and also in order to compensate the community for his/her disobedience which always implies a cost. The second problem, that of the slippery slope, clearly shows that the reference to one's conscience, no matter how sincere, is not a sufficient reason for granting the objection. In order to avoid a slippery slope with the implication of differential treatment of citizens in front of the law, the claim for CO must be qualified in some further way in order to make it distinctive and the exemption really exceptional.

We have seen that CO, though appealing to a fundamental principle, cannot be entirely derived from public reasons, otherwise becomes conflated with CD. However I will argue that the strongest cases of CO strike some middle grounds between conscience's directives and public reasons; this does not provide a conclusive argument for

accepting CO, but at least adds recognizable normative strength to CO claims which positively qualify them for acceptability.

9. In the following reasoning, I try to single out some qualifications for CO which, on the one hand, provide guidelines to make distinction between acceptable and unacceptable claims, and, on the other, account for decisions on actual cases. If my argument holds, I should end up in a sort of reflective equilibrium between qualifying criteria and moral intuitions embodied in judgments on actual cases. In the legal order of my country, CO has been granted for: a) military draft, the alternative for which has been devised in a correspondent period of civil work;¹⁷ b) abortion, that is to doctors and nurses working in public hospital and opposing to abortion, who have been granted the refusal to take any part in the practice;¹⁸ and c) for the practice of animal vivisection, that is to students and researchers of bio-medical disciplines who could refuse to take part in experiments making use of vivisection.¹⁹ By contrast, CO has been claimed but not granted for a) prescription and sale of contraceptives by Catholic doctors and pharmacists; b) prescription of the "day-after pill".²⁰ In order to find some rationale to make sense of the above decisions, I have worked out four dimensions for evaluating CO claims.

- a. The harm which the infringement of the norm produces in the legal order.
- b. The direct or indirect link between the conscience's imperative and the legally prescribed conduct.
- c. The public role of the CO claimants.
- d. The argument sustaining the claim: whether or not implies some reference to public reasons.

Let's examine each dimension in turn.

10. **Harm.** CO can engender two kinds of harm in the legal order: i) harm of a general kind which is produced by any infringement of the legal order. This general harm have both a direct effect on the production of public goods, and an indirect effect, if the infringement is not sanctioned, as an incentive to free-riding; ii) harm relative to the worsening of other people's prospects. Even if CO cannot imply the violation of others rights, because in this case it is ruled out in the first place, CO can negatively affect other people's situations. While in the draft case, only harm of a general kind can be imputed to the objector, in the abortion case, the refusal of doctors and nurses to perform abortion in their hospital unit implies that their colleagues have to do it in their place, and that women have longer waiting lists: so the exemption of objectors from a professional duty puts a burden on others and on the well working of the institution in question.

Now it seems to me that the kind of harm sub i.) i.e., general kind, cannot be avoided by any CO. Hence, if there is any case for CO at all, the general kind of harm must be discounted and cannot constitute a reason for rejecting the claim. By contrast, the harm sub ii), i.e. the worsening of other people's situation, definitely constitutes a consideration, though not final, against granting CO.

11. **Who violate the moral rule of whom?** The second dimension concerns the difference between actions which violate a moral rule of the agent, and actions which enter in a causal chain at the end of which there is a violation by someone else; in the latter case, the CO claimant, controlling a step in the causal chain and foreseeing the secondary consequences of her action, consider himself or herself responsible for permitting a moral violation and holds her duty to avoid meddling with it. Making use of these two types of conscience violation with reference of CO claims, the following obtains: in some cases, the legally prescribed conduct constitutes a direct violation of the conscience's principle, as it is for the pacifist to work in the military, for the Catholic to perform abortion and for the animal rightist to practice vivisection; in other cases, the conduct for which the exemption is asked simply *makes possible for others* the violation of *the first agent's moral principle*. Then, I would contend that it is

not just the normative force of a CO claim weaker in the second case, but, rather, that there is no case for CO at all, because admitting CO would imply an infringement of toleration and neutrality. If *others'* violation of *my* conscience's principles is accepted as a reasonable basis for disobedience, then the very possibility of individual morality to meddle with other persons' life and convictions is open; and that would imply an attack to the area of individual liberty on the basis of a third party's morality. If John's self-regarding action, such as buying contraceptives, is allowed to be restricted by Peter's moral condemnation of contraception which, in turn, backs Peter's refusal to sell contraception at his pharmacy, then the very principle of political toleration is called into question. The principle of toleration which grounds liberal and democratic legitimacy prescribes *equal* liberty of opinions, convictions and life styles, within the boundary of the harm principle. On the basis of equal liberty, one is clearly entitled to the belief in the immorality of contraception, to the expression of such a belief and to inform one's conduct accordingly, as much as another is entitled to the opposite belief. But no one is entitled put a burden on someone else holding the opposite belief, by making use of the power of interference which one happens to have in that circumstance. Toleration consists precisely in the suspension of the power of interference with others' disapproved conduct because of the respect for others. At this point it is important to recall that there are political reasons imposing toleration towards each other, and there are moral reasons recommending toleration to each of us. The political reasons for toleration come down to equal respect for all citizens: if someone's convictions were allowed to interfere with someone else's sphere of liberty, that would mean that the first person had been given more consideration than the second, infringing the basic principle of democratic ethics that each citizen is entitled to be treated with equal respect by political agencies. The moral reasons for tolerance are meant to counter the argument of the advocates of CO in these circumstances who maintain that their convictions are violated by compelling them to sell contraceptives against their moral code. If, however, within their comprehensive morality the principle of respect for others is crucial, then, acting against their moral rule (selling contraceptives) turns out to be a virtuous act rather than an immoral one. That is because tolerance has a moral value only as long as it has a cost for the tolerator, the cost of overcoming her disapproval for the moral reason of respect. The more disapproved is the conduct to be tolerated, the greater the value of the tolerant attitude and act. Whether or not the moral reasons are subscribed, the political reasons for toleration are sufficient to prevent any refusal to a legally prescribed action making it possible a third party violation of one's moral imperative to be acceptable. To sum up, no CO claim can be accepted if the refusal, ultimately, concerns a violation of one's conviction by someone else. The refusal to sell contraceptives because *others* will then use them, hence breaking *my* moral conviction is a claim of this sort, and this provides a reasonable explanation of why it was rejected right away.²¹

12. The public role of the prospective objector. In general CO is raised by people in their capacity of citizens, since it is as citizens that all of us are under the duty of obey the law. If law interfered with the domain of personal liberty, rightfully governed by one's moral code and conscience, then we would face a case for toleration, a case of unjustified political trespassing on individual freedom. By contrast, the rules for which CO is raised concern individuals in their public capacity, either as citizens or as professionals providing public services. Individuals are drafted as members of the political community, as much as professionals are under a deontological code, and moreover, have a role as public officials in countries with National Health System. If CO is generally raised for actions which have a public dimension, the public role played by CO claimants considerably differs in the case of the military objector and in the case of the doctor objecting to perform a duty which is specific to his /her public role. Each of us has a public role as a citizen; but, being a citizen is universal and non-voluntary. By contrast, being a doctor is an important and prestigious public role voluntarily entered. Claiming CO for actions which are included in the dutiful performance of one's role seems different and weaker than claiming CO for draft which befall all males. And yet, again, this consideration subtracts strength to CO claims when raised by public officials, but is not intrinsically final *vis-à-vis* the reasons sustaining the objection, as the exemption for abortion shows.²²

13. **Reasons.** CO claims are normatively stronger when they are sustained by moral reasons which are somehow related with public reasons. This quite vague formulation can be clarified by examples. Think again at the military draft case. Here the moral reason beyond the refusal is the moral prohibition of taking other people's life, the prohibition of killing others. This is a fundamental prohibition which in its general form is included in public reasons not just of liberal democracy, but indeed of any society. However in public reasons, such general principle admits of exceptions, for instance when self-defense is the case, both at the level of individual, and at the level of the community. By contrast, the pacifist takes the principle "thou shalt not kill" as absolute and admitting of no exception. And because of his absolutism, he claims CO against the draft. His position shares the same premise with public reasons and then departs in the interpretation of the same principle. As a result, it can be recognized as a forceful moral position, though its absolute, uncompromising character exceeds the domain of public reasons. Consider, by contrast, the case in which CO is claimed on the basis of reasons of personal morality which have no overlaps whatsoever with public reasons. Obviously individual persons have the right to follow their chosen moral code in the area of personal liberty constitutionally granted to everybody, no matter how odd or simply distant their views are from dominant or conventional moralities. It is only when friction between this protected domain and legal requirement is produced that problems arise. It is legitimate to hold a creed which believes vaccinations and blood transfusions wrong, but can a doctor claim CO for those practice in virtue of his belief? The point is touchy because it seems *prima facie* comparable with the abortion case. However the salient difference is that in the abortion case, the claim for CO could be partly argued in terms of public reasons. The pro-life position, as well-known, equates the abortion with infanticide.²³ The equation is highly controversial and lacks the conclusive evidence that the foetus is a person. And that is the reason why abortion laws are possible at all. Still, we can recognize this position, and understand its sense, because it is derived from a commonly shared premise, and this fact strengthens the claim for CO against abortion. Such a normative strength lacks when the reasons backing a CO claim are all internal to a code whose moral value cannot be recognized by public standards, as in the case of the refusal to sell contraception and to practice blood transfusion. In the first instance, my refusal to let someone else violate my moral norm disqualifies the claim right away; in the second instance, considerations of harm and of the public role of the claimant become paramount in adjudicating the case. As a final example, think of the claim for CO against selling the "day-after" pill. The argument was presented in analogy with the abortion case, on the basis of the equation of the "day-after" pill with abortion. Here, however, the scientific community has settled that pregnancy starts when the fertilized egg is implanted, and given that the "day-after" pill works preventing the implantation, it cannot be said to interrupt pregnancy, hence it cannot rightly be defined abortive. This definition, no matter how conventional, is in any case neutral with reference to moral positions; hence it pushes the Catholic interpretation outside the domain of public reasons. The equation of the "day-after" pill with abortion, and via the transitive property, with infanticide has no grounds outside the community which recognize the authority of the Catholic Church. At this point, the grounding reasons of the claim have lost contact with public reasons, while contrary considerations of the second kind do apply here as in the contraceptive case. We can say that the claim for CO was rejected on good reasons.

14. In conclusion, my argument is built from liberal theory, and, more precisely from that strand of liberalism which holds that the discontinuity between political reasons and private comprehensive views is indeed a necessary condition for political legitimacy in a pluralist world. The very idea of CO can make sense only in a perspective of discontinuity: otherwise, we would simply have CD. But in the perspective of discontinuity conscience is assigned to the private domain, well outside public affairs. Hence, there seems to be no justification for objection grounded on conscience. However, as it turns out, liberal democracy is torn between its commitment to justice and public reasons, on the one hand, and to freedom of conscience, on the other, which, by the way, is one of the principle of justice. Hence it is unwilling to do away with CO with no further argument. But then CO claims need qualifications in order to be justifiable and acceptable. I have tentatively listed four dimensions which help to evaluate CO claims and provide a basis for adjudication. The first dimension concerning the harm produced by the refusal is never conclusive either way; it adds or subtracts weight to the pros and cons for conceding CO. Similarly does the third

consideration, about the public role of the claimant. The second consideration, instead, pointing out *who* does violate the norm of *whom*, plays a negative role, excluding from acceptable CO claims those advanced for a violation of a moral norm by someone else. In this case, in fact, accepting CO would mean discarding toleration altogether and giving away the principle of equal respect of all citizens, independently of their comprehensive morality and lifestyles. It should be noted that if a CO claim does not encounter the obstacles signaled in the first and in the third consideration, nor is excluded by the second, there are no reasons strong enough to reject the claim. This is the case of CO against the practice of vivisection. First of all, the anti-vivisectionists refusal is not against a law, but against a practice of the scientific community; secondly, they do not worsen the prospect of other students and scholars. In a word, there is no harm involved. Thirdly, no breach of professional ethics can be imputed to the refusal of a pragmatical method of hypothesis testing. CO has been granted, but probably it was more properly a case for toleration. The fourth dimension, that of reasons, plays a crucial role in positively qualifying CO claims; if the reasons are of the right kind, that is, are related to public reasons in a recognizable way, then they work in favor of the acceptance, while the first three dimensions work more as obstacles against the case. Finally, it turns out that the more public reasons can make sense of the claim, the more acceptable it looks, but also, the less “conscientious”, the less “private” which indeed strikes the middle ground needed for making CO claims acceptable.

1 I follow the definition of CO and CD provided by N.Bobbio in *Dizionario di politica*, ed.by N.Bobbio, N.Matteucci, G.Pasquino, UTET, Torino 1983, pp. 338–342, which corresponds to that provided by H.A.Bedau in “Civil Disobedience” *Journal of Philosophy*, 58, 1961, pp. 653–661. A philosophical discussion developed around CD in the US, during the Sixties and the Seventies, due to the moral question raised by the Vietnam war and the conscription duty. For a general overview of that literature see M.B.E.Smith “The Duty to Obey the Law” in D. Patterson ed. *Companion to the Philosophy of Law and Legal Theory*, Blackwell, Oxford, pp.464–74.

2 J.Rawls, *A Theory of Justice*, Harvard University press, Cambridge Ma. 1971, §55–59, pp.363–391.

3 D.Lyons, “Moral Judgment, Historical Reality and Civil Disobedience, *Philosophy and Public Affairs*, 27, 1998: 31–49.

4 The issue whether a specific political obligation does exist is widely discussed by Joseph Raz in “Authority and Justification” in *Authority*, ed.by J.Raz, New York 1990, pp.115–141.

5 See J.Rawls, *Political Liberalism*, Columbia University Press, New York 1993, pp.212–253.

6 See J.Rawls, *Political Liberalism*, pp.131–172.

7 It may be that these two claims are not in *Political Liberalism*, but, for example, in other versions of the public sphere, such as Robert Audi’s “moral Foundations of Liberal Democracy, Secular Reasons, and Liberal Neutrality Toward the Good” *Notre Dame Journal of Law, Ethics & Public Policy*, 19, 2005, pp. 197–218. In any case, the two claims have been attributed to him by Jurgen Habermas in his recent discussion in the public sphere and secularism. See J.Habermas “Religion in the Public Sphere”, *European Journal of Philosophy*, 14, 2006, pp. 1–25.

8 On the specification of circumstances for CD see J.Rawls, *TJ*, pp.372–77.

[9](#) In this respect, it maybe worthed to recall the Charter of Fundamental Rights of the European Union, approved in Nice, on 7/12/2001. Art.10 on Freedom of Thought, Conscience and Religion, comma 2, says “The right of Conscientious Objection is recognized in accordance with the national laws governing the exercise of this right”.

[10](#) See my *Toleration as recognition*, Cambridge University Press, Cambridge 2002, pp. 23–27

[11](#) For the Harm Principle, see J.S.Mill, *On liberty*, [1859], ed.by H.B.Acton, Dent Dutton 1972. For a contemporary discussion of the Harm principle as a limit for toleration see: S.Mendus, “Harm, Offence, Censorship” (pp.99–112); J.Horton, “Toleration, Morality and Harm” (pp.113–35); P.Jones, “Toleration, Harm and Moral Effect” (pp.136–57), all of which are in *Aspect of Toleration*, S.Mendus and J.Horton eds., Methuen, London 1985; J. Raz “Autonomy, Toleration and the Harm Principle” in *Justifying Toleration*, S.Mendus ed., Cambridge University Press, Cambridge 1988, pp.155–75. For a discussion of symbolic harm see my “Relativism, Universalism and Applied Ethics: The case of Female Circumcision” in *Constellations*, 14, 2007, pp. 91–111.

[12](#) See my discussion on moral conflict in *Toleration as Recognition* , pp.78–84.

[13](#) An intolerant rule can be contested by usual means and procedures of democratic politics. Only if everything else has failed, the recourse to CD is justified.

[14](#) Thomas Paine *The Rights of Man*, part 1 [1791] in *Political Writings*, Bruce Kuklick ed, Cambridge University Press, Cambridge 1989, p.94.

[15](#) John Locke, “No opinion contrary to human society, or to those moral rules which are necessary to the preservation of civil society are to be tolerated by the magistrate” *A Letter concerning Toleration*, ed. by J.Horton and S.Mendus, Routledge, London-New York 1991, p.45

[16](#) I. Kant, *Answer to the Question: What is Enlightenment?* [1783] in *Political Writings*, Hans Reiss ed., Cambridge University Press, Cambridge 1991, pp. 54–60.

[17](#) From 2005 the military draft has been altogether abolished in Italy and substituted by a professional army. Before this change, conscientious objection to the draft has been recognised from 1972, after a number of objectors was sentenced to jail.

[18](#) The provision for conscienscious objection is included in the 194 law regulating abortion (1978).

[19](#) In this case, CO has been claimed bu LAV, an animalst association, that succeeded in its purpose in 1993.

[20](#) On this topic there is also a sentence of the European Court of Human Rights (Strasbourg, 2/10/2001). The Court dismissed the appeal by two French pharmacists who were claiming the right to CO concerning the supply of the contraceptive pill. The reasons given was that Freedom of religion does not cover each and every kind of public act or behavior motivated or inspired by religious belief.

[21](#) In the wide discussion on this point, especially among medical professionals and bioethicists, this consideration is never taken up. The argument revolver around harm to patients and the deontological duty of the professional. Among those who oppose objection, see A. Alta Charo “The Celestial Fire of Conscience. Refusing to deliver Medical

Care" in *New England Journal of Medicine*, 352, 2005, pp.2471–73, and even more straightforward Julian Savulescu "Conscientious Objection in Medicine", *BMJ*, 332, 2006, pp.294–97. A more compromising position is that of J.Cantor and K.Baum "The Limits of Conscientious Objection. May Pharmacists Refuse to fill Prescription for Emergency Contraception?" *New England Journal of Medicine*, 2004, 351, pp. 2008–12. A harsh answer to Savulescu is written by F. Chervenak and L.B. McCullough "Conscientious Objection in Medicine: Author Did Not Meet the Standard of Argument Based Ethics" *BMJ*, 332, 2006, p.425.

[22](#) This is the baseline of the article by Savulescu which however, as I contend, is not final and therefore is met by many criticisms trying to balance role–duty with conscience–duty.

[23](#) This is also the reason why abortion cannot be a matter of toleration, that is, simply left to individual choice, contrary to what many liberals hold. See for example, T.Nagel "Moral Conflict and Political Legitimacy", *Philosophy and Public Affairs*, 16, 1987, pp.215–240.

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