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Philosophy and Theology: Objection to Conscience: An Argument against Conscience Exemptions in Healthcare

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PHILOSOPHY AND THEOLOGY

Alberto Giubilini, coauthor of the well-known defense of infanticide titled “After-Birth Abortion: Why Should the Baby Live?,”¹ has written an article challenging conscientious objection to abortion. In “Objection to Conscience: An Argument against Conscience Exemptions in Healthcare,” Giubilini maintains that it is not consistent to allow conscientious objection to some procedures (procuring abortions) but not other procedures (prescribing antibiotics): “Think of a doctor who has a conscientious objection to administering antibiotics because she conscientiously believes that bacteria have significant moral status, and actually a moral status comparable to that of a foetus. I take it that most, perhaps all of us would say that this kind of objection should not be granted.”²

If no conscience protection should be given to those who object to antibiotics, then there must be some important difference between the antibiotic objector and the abortion objector. Giubilini argues that there is, in fact, no important ethical difference between them. So, since we would not allow the antibiotic objector to not prescribe antibiotics, we should also not allow the abortion objector to not perform abortions: “Defenders of conscientious objection *qua conscientious* need to say the no-harm principle constrains the right to object to antibiotics but not the right to object to abortion.”³ However, Giubilini provides no arguments why they must hold this view.

One way to respond to Giubilini is to say that both the abortion objector and the antibiotic objector may decline to provide the requested procedures: why not say that a doctor who has a conscientious objection to antibiotics does not need to

1. Alberto Giubilini and Francesca Minerva, “After-Birth Abortion: Why Should the Baby Live?,” *Journal of Medical Ethics* 39.5 (May 2013): 261–263, doi: 10.1136/medethics-2011-100411.

2. Alberto Giubilini, “Objection to Conscience: An Argument against Conscience Exemptions in Healthcare,” *Bioethics* 31.5 (June 2017): 400, doi:10.1111/bioe.12333.

3. *Ibid.*, 404.

prescribe antibiotics? This stance would have absolutely no practical consequences for any patients or doctors and removes the inconsistency objection.

Giubilini accepts that health care providers may conscientiously object to some procedures but only if the objection is based on medical principles such as nonmaleficence:

I have also argued that objections by [health care professionals] are sometimes justified. They are justified—which means that objections should be respected and that good doctors should put them forward—only when the practice to which doctors object violates principles and values of the profession. I have provided two examples of such justified objections, namely objection to providing medical assistance in death penalty and objection to releasing refugees back to refugee camps when this would be detrimental to their health. What justifies the objections in such cases is some substantial value and principle informing the profession, and not values or principles related to the formal notion of conscience such as moral integrity, dignity, or freedom of conscience.⁴

Giubilini's view on this point is inconsistent with his earlier criticism of the antibiotic objector who appeals to the principle of nonmaleficence when declining to kill bacteria. Giubilini should either allow physicians to withhold antibiotics and not participate in the death penalty, the theoretical objectors both violate the principle of nonmaleficence, or he should not allow them to refuse either.

Another reply to Giubilini's challenge is that there are significant differences between bacteria and human beings. The Declaration of Independence holds as a self-evident truth that "all men are created equal" and "endowed . . . with certain inalienable rights." It is hardly a self-evident truth that all bacteria are created equal and endowed with inalienable rights. Giubilini seeks to dispel this concern: "One might argue that one value of medicine that could justify opposition to abortion is the special value attributed to human life, which would yield an ethical principle that prescribes to preserve human life whenever possible."⁵ Giubilini points out that the medical profession does not require that all human life be preserved regardless of the consequences.

Unfortunately, Giubilini distorts the relevant ethical principle. The claim that human beings have special value and should not be intentionally killed is not the same as the claim that doctors must preserve human life whenever possible. Arguably, the claim that all human beings have equal basic value and should be accorded basic rights is a fundamental principle of Western civilization. Giubilini misconstrues the inviolability of life (innocent human beings deserve protection in law from being intentionally killed) as a form of vitalism (all human lives must always be extended as much as possible regardless of the burdens and benefits of treatment).⁶ The claim

4. Ibid., 408.

5. Ibid., 404.

6. On vitalism, the inviolability of life, and the quality of life, see John Keown, *The Law and Ethics of Medicine: Essays on the Inviolability of Human Life* (Oxford: Oxford University Press, 2012).

that no innocent life should be taken is not the claim that everything possible must be done to extend everyone's life in every circumstance.

Giubilini's case for abolishing conscience protections continues: "Doctors who refuse to provide an abortion to a woman who requests it are typically refusing to provide a medical service that is safe, beneficial, and autonomously requested by the woman; therefore, they are acting against the ethical standards of beneficence and respect for patient autonomy which are commonly accepted in contemporary Western medical ethics and medical deontological codes."⁷

Is it true that not performing an abortion violates patient autonomy? Refusing to perform an abortion does not violate a patient's autonomy *simply* because the patient requests the abortion. Doctors not only may but must deny some autonomous requests, for example, when a patient wants oxycodone for recreational use. Women who are denied an abortion from one doctor retain their autonomy, which is why they can get an abortion from another doctor.

The beneficence of abortion is equally questionable. It never benefits the prenatal human being, and doctors who object to abortion typically do not agree that it is safe for women.⁸ Even Giubilini implicitly acknowledges that late-term abortions carry significant physical and psychological risks: "Abortions at an early stage are the best option, for both psychological and physical reasons."⁹ Is early abortion safe? Abortions cause an increase rate of ectopic pregnancy, which is a leading cause of death among pregnant women.¹⁰ Even if it were the case that abortions were safe, beneficial, and autonomously requested, Giubilini's defense of forcing health care workers to perform them makes inconsistent appeals to authority:

In fact, abortion is a procedure that is permitted by many medical associations and that can be performed, as the American Medical Association prescribes, in accordance with good medical practice; it is also commonly taught in medical schools in many countries. How could the institution of medicine condone something like abortion if the prescription to try to save all forms of human life was a core principle of the profession? An absolute prohibition to kill a fetus is not consistent with principles of contemporary medicine and is not itself a principle of contemporary medicine.¹¹

7. Giubilini, "Objection to Conscience," 404.

8. On the question of the safety of abortion, see Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*, 2nd ed. (Routledge: New York, 2015) 197–203.

9. Giubilini and Minerva, "After-Birth Abortion," 263.

10. F. Parazzini et al., "Induced Abortions and Risk of Ectopic Pregnancy," *Human Reproduction* 10.7 (July 1995): 1841–1844; Jyotindu Debnath et al., "Ectopic Pregnancy in the Era of Medical Abortion: Are We Ready for It? Spectrum of Sonographic Findings and Our Experience in a Tertiary Care Service Hospital of India," *Journal of Obstetrics and Gynecology of India* 63.6 (November–December 2013): 388–393, doi: 10.1007/s13224-013-0459-2; and Osaheni L. Lawani, Okechukwu B. Anozie, and Paul O. Ezeonu, "Ectopic Pregnancy: A Life-Threatening Gynecological Emergency," *International Journal of Women's Health* 5 (July 15, 2013): 515–521, doi: 10.2147/IJWH.S49672.

11. Giubilini, "Objection to Conscience," 404.

Giubilini is correct that the contemporary medical establishment permits abortion. However, these same institutions as well as the law in the United States also permit conscientious objection to abortion:

Most states have “conscience clauses,” which describe a right of refusal for physicians, and in some cases for other providers and for health care organizations such as religious hospitals. Most of these state laws, as well as similar conscience clauses in federal statutes, professional codes of ethics, and institutional policies, were enacted after the passage of *Roe v. Wade* in 1973 to permit physicians to opt out of performing or participating in legalized abortions. Today, most medical students opt out of learning how to perform abortions, as they are permitted to do under the American Medical Association’s code of ethics.¹²

So the absolute prohibition of conscientious objection to abortion proposed by Giubilini is neither consistent with nor included among the principles of contemporary medicine. The authorities to which Giubilini appeals hold that abortion is permissible, but they also hold that conscientious objection to abortion is permissible. So Giubilini incorrectly claims that “as far as consistency with professional values is concerned, opposition to abortion is no different from opposition to antibiotics on grounds of moral status.”¹³ No federal statutes, no professional codes of ethics, no institutional policies, and no medical school guidelines protect antibiotic objectors. Giubilini’s argument inconsistently appeals to contemporary practices. Western medical ethics does not require conscientiously objecting physicians to perform abortions as an expression of beneficence and respect for patient autonomy. Doctors also retain a rightful autonomy, including the freedom not to violate their consciences by performing abortions.

Let us return to the heart of Giubilini’s case, that prenatal human beings and bacteria are in relevant ways alike:

Consider the following description of a patient’s condition. Suppose there is a woman who has a parasitic organism in her body—call this organism *x*. The organism is causing her a lot of distress and is affecting and probably will affect her mental and physical health and her plans in the short and/or in the long term. The woman needs and wants to get rid of *x* so as to restore her good health. This description fits both the case of a woman asking for abortion and that of a woman with some bacterial infection. In one case *x* is a foetus, in the other it is a bacterium.¹⁴

According to this way of thinking, both the antibiotic objector and the abortion objector refuse to eliminate a parasitic organism that is causing distress.

12. Nancy Berlinger, “Conscience Clauses, Healthcare Providers, and Parents,” in *From Birth to Death and Bench to Clinic: The Hastings Center Bioethics Briefing Book for Journalists, Policymakers, and Campaigns*, ed. Mary Crowley (Garrison, NY: The Hastings Center, 2008), 35.

13. Giubilini, “Objection to Conscience,” 405.

14. *Ibid.*, 405.

Let us set aside the dehumanizing and degrading rhetoric in which a prenatal human being is called a parasite. To depend on another person for continued existence, as do newborns and also some kinds of conjoined twins, is not to lack human dignity. While it is true that a prenatal human being and a bacterium are both organisms that depend on the body of another, they are different in important, widely recognized ways. Countless medical professionals, such as those specializing in maternal–fetal medicine, dedicate their time and talent to healing and preserving the lives of prenatal human beings. By contrast, there are no neonatal intensive care units for bacteria or ultrasound photos of growing bacteria put on refrigerators, and I have never heard of anyone suffering depression after miscarrying their bacteria. Indeed, in circumstances other than abortion, for example, a car accident in which a pregnant woman is injured, doctors work to save not only the woman but also the prenatal patient. In circumstances other than abortion, the law in the United States protects human beings in utero.¹⁵ For example, the law treats the murder of a pregnant woman as a double homicide. None of this is true of bacteria.

There is another significant difference between prenatal human beings and bacteria. It is not a sign of health but rather a lack of health when a woman's body cannot successfully sustain a pregnancy. Conversely, it is a sign of health when a woman of reproductive age can become pregnant. A pregnant woman does not suffer from a disease, and the son or daughter in utero is not a parasite working against the well-being of her body. If a woman is healthy, her body is working, successfully functioning to sustain her progeny. It is abortion that introduces a pathology by interrupting the healthy functioning of the woman's body in sustaining the pregnancy. In contrast, by killing bacteria, antibiotics restore healthy functioning and aid the body in doing what it often does unaided: destroy bacteria.

Is objection to abortion more reasonable than objection to antibiotics? Giubilini thinks not:

Using coherence with empirical data as criterion for reasonableness would yield the same response, since we have no evidence at all in support of claims about souls in fetuses. Unless we can explain what makes certain religious views based on unproven metaphysical assumptions more reasonable, i.e. more coherent with empirical data, than other religious or metaphysical views to which we are simply less accustomed, we don't have a principle we can use to discriminate between different cases of conscientious objection.¹⁶

Giubilini introduces two different standards of reasonableness. To be supported by empirical data is not the same as to be coherent with it, that is, not contradictory to it. Each claim is problematic but for different reasons.

To claim that a view is unreasonable if not supported by empirical data is self-defeating, because this account of reasonableness is not supported by empirical data. No experiment establishes the philosophical belief that reasonableness means being

15. See Gerard V. Bradley, "The Future of Pro-Life Legislation and Litigation," *Public Discourse*, October 18, 2018, <http://www.thepublicdiscourse.com/>.

16. Giubilini, "Objection to Conscience," 406.

supported by experiments. No scientific study proves that scientific reasoning is the only legitimate form of inference. “Science alone provides the truth” is a statement that science alone does not make. These self-defeating statements of scientism are no more self-referentially coherent than the statement “This sentence is not written in English and is exactly three words long.” So even if it were true that there is no scientific evidence for the soul of a fetus—or a newborn or a teenager—this lack of empirical evidence does not make the view unreasonable.

A second and very different understanding of reasonableness appealed to by Giubilini is coherency with empirical data. However, he does not cite a single study or finding of the empirical sciences that conflicts with the belief that an individual human being has a soul. The empirical data about fetal development is entirely compatible with belief in a soul. No known biological, psychological, or physiological fact contradicts this belief. If the soul is immaterial, it cannot be directly studied by empirical science. If we define the soul as immaterial, we could argue—philosophically not scientifically—that souls do not exist by presupposing a philosophical premise that only material things exist or that nothing beyond nature exists. It may be that Giubilini presupposes materialism and naturalism to be true, but he surely must know that many reasonable people deny these philosophies, as Alvin Plantinga makes clear in his book *Where the Conflict Really Lies*.¹⁷

Finally, even if Giubilini were right that belief in souls is unreasonable, the soul does not need to be invoked and typically is not invoked to justify opposition to abortion in philosophical discourse. To give one example, Don Marquis, an atheist, defends the future-like-ours argument against abortion, which relies on the premise that killing you or me is wrong because it deprives us of our valuable future.¹⁸ If someone kills us now, we are deprived of the friendships and family times, meals and movies we would have enjoyed for the rest of our lives. The human fetus and the human newborn also have a future like ours, so killing them is wrong for the same reason killing you or me is wrong. This argument does not invoke the soul, and it does not apply to bacteria, which do not have a future like ours. Indeed, virtually no contemporary philosophical critique of abortion presupposes belief in the soul,¹⁹ so it is hard to see why Giubilini makes critique of belief in souls so central to his case for taking away health care workers’ right to not perform abortions. In doing so, Giubilini attacks a straw man.

Finally, it is worth recalling that Giubilini holds that pre-birth abortion and after-birth abortion are ethically similar insofar as neither the prenatal human being nor the newborn human being is a person with a right to life. In his view, “the same

17. Alvin Plantinga, *Where the Conflict Really Lies: Science, Religion, and Naturalism* (Oxford, UK: Oxford University Press, 2011).

18. Don Marquis, “Why Abortion Is Immoral,” *Journal of Philosophy* 86.4 (April 1989): 183–202. See also Don Marquis, “Abortion Revisited” in *The Oxford Handbook of Bioethics*, ed. Bonnie Steinbock (Oxford: Oxford University Press, 2007) 395–415.

19. See Kaczor, *The Ethics of Abortion*; Robert P. George and Christopher Tollefsen, *Embryo: A Defense of Human Life* (New York: Doubleday, 2008); and Patrick Lee, *Abortion and Unborn Human Life*, 2nd ed. (Washington, DC: Catholic University of America Press, 2010).

reasons which justify abortion should also justify the killing of the potential person when it is at the stage of a newborn.”²⁰ So if his analysis of conscience protections is correct, doctors who conscientiously oppose infanticide should nevertheless be forced to kill healthy newborn infants. If the reasons justifying pre-birth abortion are also compelling for after-birth abortion and if conscience protections do not exempt doctors from performing pre-birth abortions, then conscience protections do not exempt doctors from performing after-birth abortions.

Is it reasonable to force an unwilling doctor who conscientiously rejects infanticide to kill a healthy baby after she is born? If it is not reasonable, then we should reject Giubilini’s views on conscience, his views on pre-birth abortion and after-birth abortion, or his views on both.

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20. Giubilini and Minerva, “After-Birth Abortion,” 263.