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2019

Philosophy and Theology: Conscientious Objection in Europe and Mexico

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Kaczor, Christopher, "Philosophy and Theology: Conscientious Objection in Europe and Mexico" (2019).
Philosophy Faculty Works. 186.

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PHILOSOPHY AND THEOLOGY

Although the rights of conscientious objectors continue to be the subject of debate in the United States, the discussion is also active in Europe and Mexico. For example, in his essay “Abortion and Conscientious Objection” Gustavo Ortiz-Millán provides a justification for excluding institutions from rights of conscientious objection. He writes, “I want to emphasize that CO [conscientious objection] is an individual’s right: it is always the expression of a personal position, of the individual conscience of a person, which is intended to protect a private sphere from government or institutional intervention. Collective agents, such as hospitals, clinics and other institutions—even if they have a moral character and legal personality, and are capable of making legal claims in their own right—have no claim to moral conscience and cannot invoke the right to CO as individuals can.”¹

Notice the lack of any argument for the conclusion that collective agents cannot have rights of conscientious objection. The conclusion is simply asserted. We are given no reason at all why collective agents cannot make conscientious objections. If hospitals can make legal claims, why can they not make moral claims? If a hospital can be held legally responsible, why can a hospital not be held morally responsible? How can a hospital have a moral character, as Ortiz-Millán recognizes, unless the hospital embodies in its practices conscientious judgments about what is right and what is wrong?

Ortiz-Millán continues his argument against conscientious objection: “It is discriminatory for a state, an institution or an individual to refuse to provide a certain health service that is exclusive to women, such as abortions. Restrictive abortion laws, it is alleged, infringe the rights to privacy, equality, and autonomy of women,

1. Gustavo Ortiz-Millán, “Abortion and Conscientious Objection: Rethinking Conflicting Rights in the Mexican Context,” *Global Bioethics* 29.1 (December 2018): 6, doi: 10.1080/11287462.2017.1411224.

while legislation recognizes these to men, so there are grounds for thinking that these laws are discriminatory.”² According to this way of thinking, because abortion rights are women’s rights, to refuse to perform abortion is an act of discrimination against women.

In fact a law against performing abortion or a law allowing conscientious objection treats men and women with perfect equality, forbidding both men and women equally from intentionally killing prenatal human beings, or allowing both men and women equally to avoid intentionally killing prenatal human beings.

Yet, an objector might say, abortion is a women’s rights issue because only women can get abortions. This common defense of abortion is now called into question by many who defend abortion. For example, an essay in the *Huffington Post* proclaimed, “Women aren’t the only people who get abortions. Transgender men and other gender-nonconforming folks get abortions, too.”³ These two defenses of abortion are incompatible. If abortion is uniquely a women’s rights issue, then men cannot get abortions. If men can get abortions, abortion is not uniquely a women’s rights issue. Nevertheless, it remains true, even from the perspective expressed in the *Huffington Post*, that laws about abortion have a disproportionate effect on women.

In responding to this concern it is important to note that the effect of such laws is not on women as a class. The vast majority of women are not pregnant; indeed a huge number of women, such as postmenopausal women, cannot get pregnant. Among those who are pregnant, most do not choose to get an abortion. Among those who want an abortion, most do not try to get an abortion from a conscientious objector. So it is misrepresenting the situation to pit women as a class against conscientious objectors. Indeed many women are themselves conscientious objectors to abortion.

Is the disproportionate effect on the small number of pregnant women who want an abortion from a conscientious objector decisive for rejection of conscientious objection? It would seem not. Almost all laws have a disproportionate effect on some group in society. Laws banning murder disproportionately affect men, who commit the vast majority of murders. Laws against embezzlement disproportionately affect those working in financial institutions. Laws against discrimination in employment disproportionately affect employers. Laws against child abuse disproportionately affect parents and child care workers. The fact that the laws allowing conscientious objection may affect pregnant women who want to get abortions from conscientious objectors should not count as a decisive consideration against those laws as if such laws burdened all women.

Ortiz-Millán continues with a consequentialist case: “Balancing rights, the harm to the health, physical integrity and future well-being of women weigh more than the harm to the conscience of the objector.”⁴ Here we have an unbalanced analysis

2. *Ibid.*, 7.

3. Alanna Vagianos, “Women Aren’t the Only People Who Get Abortions,” *HuffPost*, updated June 7, 2016, https://www.huffpost.com/entry/women-arent-the-only-people-who-get-abortions_n_5cf55540e4b0e346ce8286d3.

4. Ortiz-Millán, “Abortion and Conscientious Objection,” 7.

which does not take into account all the consequences. The first and most important consequence which Ortiz-Millán ignores is the harm to the health, physical integrity, and future well-being of prenatal human beings. The harm to their health is lethal. The harm to their physical integrity is absolute and maximal, the total breakdown of all physical integrity. And, as Don Marquis has repeatedly pointed out, abortion harms an individual by depriving him or her of all future well-being, including friendship, personal integrity, enjoyment of beauty, knowledge, and family life.⁵ Moreover, the harm to the conscientious objector is arguably much more significant than the harm to the woman who has to look for a willing abortion provider. Such inconvenience can hardly be said to outweigh either losing one's job or enduring the guilt of shedding innocent blood.

Ortiz-Millán continues his critique of conscientious objection, writing, "Recognition of the right to termination of pregnancy does not simply mean that the state is not penalizing women who decide, for whatever reason, to interrupt their pregnancies, but it also implies that the state ought to make sure that there will be enough personnel to provide the service."⁶ Abortion rights are, on this account, unlike other rights. We have a right to travel, but this does not imply that the state ought to make sure that there are drivers and pilots to provide traveling services. We have a right to free speech, but this does not imply that the state ought to make sure that there will be enough newspaper editors to transmit our views. We have a right to drink alcohol, but this does not imply that the state ought to make sure that there are enough bartenders to provide pinot noir. In sum, Ortiz-Millán does not justify the removal of rights of conscientious objection, but let us turn now to European discussions.

The *European Journal of Contraception and Reproductive Health Care* recently sponsored a discussion about the abolition of rights of conscientious objection. Only one side of the debate was represented. Johannes Bitzer, the editor and himself an abortionist, explained his position as follows: "The conscientious objector within me would tell me that I am destroying life and therefore acting against a fundamental moral and ethical value. This is true: there is indeed a conflict between my professional and ethical duties towards the woman and my general professional and ethical duties towards emerging life (embryo, fetus). In this conflict, however, my duties towards the woman override all others, because without her body there would be no new life and without her support there would be no good life."⁷

5. Don Marquis, "Why Abortion Is Immoral," *Journal of Philosophy* 86.4 (April 1989): 183–202, doi: 10.2307/2026961; Don Marquis, "A Future like Ours and the Concept of Person: A Reply to McInerney and Paske," in *The Abortion Controversy: A Reader*, ed. Louis P. Pojman and Francis J. Beckwith, 2nd ed. (Belmont, CA: Wadsworth, 1998), 372–385; and Don Marquis, "Abortion Revisited," in *The Oxford Handbook of Bioethics*, ed. Bonnie Steinbock (New York: Oxford University Press, 2007), 395–415.

6. Ortiz-Millán, "Abortion and Conscientious Objection," 8.

7. Johannes Bitzer, "Conscientious Objection—To Be or Not to Be," *European Journal of Contraception and Reproductive Health Care* 21.3 (May 16, 2016): 195, doi: 10.3109/13625187.2016.1156246.

It is refreshing to hear a frank admission from an abortionist that abortion destroys life and is against a fundamental moral and ethical value. But almost immediately honesty turns to evasion when Bitzer speaks of “emerging life” as if a prenatal human being were not an actual living human being. Whatever can die is actually alive, and a human embryo can die. Moreover, cases of in vitro fertilization show that “without her body” there can indeed be new life. Cases of adoption show that “without her support” there can indeed be a good life, as countless people who were adopted (such as myself) can readily attest.

Bitzer wonders how to handle those health care professionals “who put their personal conscience above their professional duties.” He then quotes the American College of Physicians, which indicates, “A physician who objects to these services is not obligated to recommend, perform, or prescribe them.”⁸ Later Bitzer cites the United Kingdom’s General Medical Council, which says, “You [the health care provider] may choose to opt out of providing a particular procedure because of your personal beliefs and values, as long as this does not result in direct or indirect discrimination against, or harassment of, individual patients or groups of patients.”⁹ These professional bodies, and many others, make clear that there is no professional duty for conscientious objectors to provide abortions. So, since there is no professional duty to provide abortions, conscientious objectors do not put their personal conscience above their professional duties, *pace* Bitzer.

Like Bitzer, Roberto Lertxundi and colleagues recognize that “conscientious objection is widely considered to be a recognised right for all professionals, although its undemocratic practice counteracts the application of democratically passed laws to legalise abortion.”¹⁰ This claim is confused. The practice of conscientious objection is in no way undemocratic. The democratically passed laws of many countries permit health care professionals not to perform abortions. There simply is no contradiction in laws upholding both a legal right to abortion and also a legal right not to perform abortions. In a similar way, individual authors have a legal right to write editorials denouncing the government. Individual editors have a legal right not to print those editorials in their papers. There is a world of difference between allowing one individual the legal right to choose something and forcing another individual to facilitate that choice.

Lertxundi and colleagues also make these three claims: “Every woman has the fundamental right to choose to bear a child. Denying or interfering with this right is discrimination. Access to voluntary abortion is an integral part of the right of women to sexual and reproductive health.”¹¹ All three of these propositions are problematic.

8. *Ibid.*

9. *Ibid.*, 196.

10. Roberto Lertxundi et al., “Proposal to Inform European Institutions regarding the Regulation of Conscientious Objection to Abortion,” *European Journal of Contraception and Reproductive Health Care* 21.3 (March 17, 2016): 198, doi: 10.3109/13625187.2015.1135897.

11. *Ibid.*, 199.

First, there is no legal or moral right to bear a child. Children are not property that people have a right to possess or bear. No one, man or woman, has the right to a child.

Likewise, the second claim, “denying or interfering with this right [to bear a child] is discrimination,” should be questioned. Let us say a particular man refuses to impregnate a particular woman. He conscientiously objects to becoming a father with any woman. Does it really make sense to accuse him of denying or interfering with her rights and practicing discrimination against her? This is hard to believe.

We should also reject the third claim that “access to voluntary abortion is an integral part of the right of women to sexual and reproductive health.” Abortion is not health care, because pregnancy is not a disease. Indeed it is the inability to achieve and sustain pregnancy that is a disability called infertility. Moreover, the fundamental law of medicine is “do no harm.” The goal of the abortionist is to inflict lethal harm on the prenatal human being. Abortion, as the Hippocratic oath indicates, is a violation of the moral duties of health care providers.¹²

I should also note that Lertxundi and colleagues use a question-begging epithet that conscientious objection should really be called “dishonorable disobedience.”¹³ We may ask, Disobedience to whom? In legal jurisdictions that permit conscientious objection, there is no legal disobedience. There is no disobedience to patients, since doctors and health care providers have not taken vows of obedience to patients to provide whatever they happen to request. Nor is there disobedience to the duties of the medical profession as articulated by various professional societies. Nor, I would argue, is there disobedience to the God of Abraham, who hates the shedding of innocent blood (Prov. 6:17, Exod. 20:13). Conscientious objection involves no disobedience, let alone dishonorable disobedience. On the contrary, it shows honor to the human person not to intentionally kill the innocent prior to or after birth.

In another essay in the *European Journal of Contraception and Reproductive Health Care*, Christian Fiala and coauthors also try to justify the question-begging epithet “dishonorable disobedience” by arguing that conscientious objection “violates medical ethics and the right to lawful health care.”¹⁴ But it is far from obvious that conscientious objection violates medical ethics. Anyone who claims that there is a consensus among scholars doing medical ethics that conscientious objection cannot be allowed is not sufficiently familiar with scholarly debates in the field. Indeed there is not even a consensus that abortion is ethically permissible,¹⁵ let alone that doctors should be forced to perform abortions. The various professional bodies which defend

12. On this topic, see the wonderful book by Thomas Cavanaugh, *Hippocrates' Oath and Asclepius' Snake: The Birth of the Medical Profession* (New York: Oxford University Press, 2017).

13. Lertxundi et al., “Regulation of Conscientious Objection,” 199.

14. Christian Fiala et al., “Yes We Can! Successful Examples of Disallowing ‘Conscientious Objection’ in Reproductive Health Care,” *European Journal of Contraception and Reproductive Health Care*, 21.3 (February 3, 2016): 201, doi: 10.3109/13625187.2016.1138458.

15. See, for example, the recent debate between Kate Greasley and Christopher Kaczor, *Abortion Rights: For and Against* (New York: Cambridge University Press, 2018).

the practice do not hold that conscientious objection violates medical ethics. Nor is it true that conscientious objection violates the right to lawful health care. From an individual's lawful right to abortion it does not follow that another individual is to be forced to provide that abortion. An individual may have a lawful right to travel to New York, but this right does not require United Airlines (or any other airline) to provide the flight.

Fiala and coauthors then offer a one-sided, consequentialist analysis of conscientious objection as found in Sweden, Finland, and Iceland. These authors count only benefits and consider no burdens: "A key feature common to the three countries is the mandatory training in abortion care for Ob/Gyns (and midwives in Sweden). This aspect has a significantly positive effect *for everyone involved*."¹⁶ Not everyone is actually included in their calculus. To be killed before birth is hardly a significant positive effect for the individuals who are killed, since they are deprived of their futures and (in typical ways abortions are performed) violated in terms of bodily integrity. *Everyone* also excludes secular pro-life Ob/Gyns and people of faith committed to the equal basic dignity of all human beings as made in the image of God. Fiala and coauthors also ignore the costs of discriminating against conscientious objectors on the practice of medicine in general. Whenever a certain class of people is prohibited from practicing in a field, the diverse gifts that those people would have brought are lost for everyone. It very well could be that the person who would have made the best brain surgeon or could have discovered a cure from breast cancer would be screened out by mandatory abortion training in medical school.

Even if Fiala and coauthors were right that consequentialist arguments justify banning conscientious objectors from the practice of medicine, many arguments for conscientious objection are Kantian arguments from principle, rather than utilitarian arguments from consequences. Basic human rights are not to be trumped by a calculus of consequences, and conscientious objection is recognized by many as a basic human right. So even if it were the case that banning conscientious objection could in some circumstances lead to better consequences than not banning conscientious objection, that fact would be beside the point if fundamental human rights are involved.

Like Ortiz-Millán, Fiala and coauthors also object to allowing hospitals to opt out of performing abortions, because "only individuals can have a conscience, never institutions."¹⁷ It is true that only individuals have consciences, just as only individuals have free will and therefore can be held responsible for their decisions. But legally and morally we recognize institutional responsibility. We hold corporations responsible for the harms that they inflict on the environment because, even though a corporation as such does not have free will and responsibility, the individuals who run a corporation do. So, in the same way, the consciences of the individuals who run health care institutions can bind them to run those institutions in accordance with their best judgments.

16. Fiala et al., "Yes We Can," 204, emphasis added.

17. *Ibid.*

Finally, it is critical to recall what is at stake in this debate about conscientious objection. Fiala and coauthors wish the rest of the world was like Sweden, in which “medical authorities have stated that those who object to performing abortions (or inserting intrauterine contraception) cannot become obstetricians/gynaecologists (Ob/Gyns) or midwives. Abortion care is included in the curricula *for all medical students*, and those who wish to become an Ob/Gyn or midwife must have mandatory training in abortion care. There is no way to opt-out.”¹⁸ In this world Catholics and other believers as well as secular conscientious objectors would have no place in the practice of medicine. If providing abortions becomes a mandatory part of the curricula for all medical students, then people of faith and secular objectors will simply not be able to become doctors.

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18. *Ibid.*, 202, emphasis added.