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## Philosophy and Theology: Conscientious Objection

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## PHILOSOPHY AND THEOLOGY

Conscientious objection in medicine is widespread and legally protected in much of the world but called into question by Alberto Giubilini and Julian Savulescu in their recent essay, “Beyond Money: Conscientious Objection in Medicine as a Conflict of Interests.” They argue that “personal moral or religious beliefs can affect one’s professional practice to the same extent as, if not to a greater extent than, financial interests.”<sup>1</sup> Just as a competing financial interest can compromise health care, so too can competing moral interests. If a doctor pushes a certain kind of medication because the pharmaceutical company pays for his yearly vacation to Maui, the doctor’s independent judgment may be compromised in giving care. So, too, they write, “Moral interests also have implications for one’s status and standing to others and oneself. Someone’s conscientious objection to abortion might help them gain social recognition among colleagues or superiors who share the underlying moral beliefs. Thus, moral interests may be a more potent source of conflict than money, both because of a professional’s interest in preserving their own moral integrity and because of their interest in gaining some form of recognition within a certain group (say, colleagues or superiors with the same moral convictions, their religious community, and so on)” (Giubilini and Savulescu, 232). Is this a fair characterization of conscientious objection?

Conscientious objection may indeed garner positive regard for a health care professional in his or her local community, but this is an accidental characteristic of acting on one’s convictions. True conscientious objection cannot be reduced to

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1. Alberto Giubilini and Julian Savulescu, “Beyond Money: Conscientious Objection in Medicine as a Conflict of Interests,” *Journal of Bioethical Inquiry* 17.2 (June 2020): 231, doi: 10.1007/s11673-020-09976-9. All subsequent citations appear in the text. They report, “In Italy the rate of gynaecologists who conscientiously object to abortion is consistently above 70 per cent (with peaks of over 80 per cent in certain regions), and the law allows those with a conscientious objection to refuse to perform abortion” (230).

gaining social recognition and not just because demurral can and often does gain negative social recognition in a community. Precisely as *conscientious*, this form of action is distinct from a mere means of gaining some advantage. That is to say, if the reason for conscientious objection were simply to seek social recognition, it is arguably not, properly speaking, conscientious objection at all, which, at least in the minds of many of its supporters, is a conviction that a particular action ought not to be done regardless of the consequences. That is why military conscientious objectors suffer prison terms or worse rather than do actions that they consider unjust. To think of conscientious objection as a mere means to positive social regard is to radically misconstrue it.

Giubilini and Savulescu note, quite properly, that extrinsic motivations such as winning a prize for best health care professional in the hospital that year may be operative with no compromise of care for the patient. In this case, personal interest and professional obligations are mutually reinforcing. But these motives can easily be set in opposition to each other. Providing the best care for a patient may take time that could otherwise be spent in ways that are more visible to the committee awarding the prize. So, in many cases, actually doing what serves the interest of the patient may not also serve the health care professional's personal interest. This is especially true in situations in which those giving the prizes are corrupted by ideologies contrary to the authentic human good, which has taken place many times in history.

Giubilini and Savulescu write, "The important factor in judging whether a doctor has behaved unethically in relation to a COI [conflict of interest] is not the type of interest the doctor held, or even whether the doctor was self-interested, but whether the medical advice or treatment that was in fact provided was in line with what should have been provided for the patient according to the principles of medical ethics" (Giubilini and Savulescu, 233). Of course, according to Giubilini and Savulescu, sound medical ethics permit abortion. The conscientious objector, by contrast, accepts the principle articulated in the Hippocratic Oath, "I will not give to a woman a pessary to produce abortion."<sup>2</sup>

How then to resolve this contradiction? Giubilini and Savulescu write,

Some believe that abortion falls into the same category as capital punishment: even if it is legally available, it is against the principles of medical ethics. But medical ethics is not relativist. It does not depend on what one thinks or earnestly believes is right or wrong. Abortion is taken to be consistent with the accepted ethical standards of the healthcare profession, and rightly so: it can be in a woman's best interest and it does not go against any sufficiently morally significant interest of the foetus, including the interest in living, given certain plausible philosophical assumptions. Arguing for this claim here is beyond the scope of this paper, of course. (Giubilini and Savulescu, 235)

Sound medical ethics seems to be defined here in terms of current professional standards. Such standards do allow abortion, but they also recognize the legitimacy of conscientious objection, at least as articulated by medical societies around the

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2. For more on this topic, see T.A. Cavanaugh, *Hippocrates' Oath and Asclepius' Snake: The Birth of the Medical Profession* (Oxford: Oxford University Press, 2018).

world. So, if the health care professional's actions are morally legitimate if they are permissible according to sound medical ethics as defined by professional societies, then it follows that it is morally legitimate for health care professionals not to perform abortions.

Moreover, it is hard to see how defining medical ethics by means of committee fiat is not a form of relativism but the actions of the typical conscientious objector supposedly are a form of relativism. As Chris Gowans points out in *The Stanford Encyclopedia of Philosophy*, "The term 'moral relativism' is understood in a variety of ways. Most often it is associated with an empirical thesis that there are deep and widespread moral disagreements and a metaethical thesis that the truth or justification of moral judgments is not absolute, but relative to the moral standard of some person or group of persons."<sup>3</sup> According to this understanding, it is relativist to define medical ethics as whatever the groups of persons who make up the code of professional conduct say it is. Thus, it is the view of Giubilini and Savulescu that is actually relativist.

By contrast, the following statement from Pope St. John Paul II, which would be endorsed by many conscientious objectors, is emphatically and diametrically opposed to moral relativism:

I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being. This doctrine is based upon the natural law and upon the written Word of God, is transmitted by the Church's Tradition and taught by the ordinary and universal Magisterium.

No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.<sup>4</sup>

The conscientious objector who accepts this teaching is a moral absolutist, not a relativist. Such an objector holds that abortion is wrong for everyone, all the time, regardless of what the law holds, regardless of approval by various committees, regardless of societal consensus. This is the view not of a moral relativist but of a moral absolutist.

The nonrelativistic nature of conscientious objection makes sense of why a doctor who refuses to perform abortions also refuses to refer patients for abortions. Giubilini and Savulescu also misconstrue refusal to cooperate, which they say "is plausibly attributable to both or either a sense of self-respect that comes from protecting one's own moral integrity and/or the desire to protect one's reputation and standing in the eyes of one's own group. If we consider what might amount to a comparable FCOI [financial conflict of interest], it is plausible to suppose that it would take a very large sum of money to be considered sufficient incentive for a physician to act against the best interest of a patient whose life is at stake" (Giubilini and Savulescu, 37).

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3. Chris Gowans, "Moral Relativism," in *The Stanford Encyclopedia of Philosophy*, Spring 2021 ed., ed. Edward N. Zalta, <https://plato.stanford.edu/archives/spr2021/entries/moral-relativism/>.
  4. John Paul II, *Evangelium vitae* (March 25, 1995), n. 62.

Giubilini and Savulescu seem to assume that conscientious objection is based on a utilitarian calculus of self-interest. If just offered a high enough incentive, then the pro-life doctor will perform the abortion. But this radically mischaracterizes the conviction of many pro-life doctors who consider abortion an intrinsically evil act. For them, *no benefit* is sufficient incentive to perform an abortion. Indeed, religious conscientious objectors take inspiration from martyrs who refused to do evil even when the only alternative was torture and death. St. Thomas More would not acknowledge King Henry VIII as head of the Church in England and was beheaded as a result. Many conscientious objectors agree with Elizabeth Anscombe in her complete refusal “to commit or participate in any unjust actions for fear of any consequences, or to obtain any advantage, for himself or anyone else.”<sup>5</sup> Giubilini and Savulescu’s critique involves a fundamental misconception of conscientious objection as one interest to be balanced in consequentialist fashion against other interests. Many conscientious objectors reject consequentialism, and many would rather die than intentionally kill innocent prenatal human beings, so no incentive would be able to compensate them for performing an abortion.

Giubilini and Savulescu also argue that conscientious objection places an unfair burden on other colleagues. They write,

The burden of the collective obligation ought to be shared fairly among individual members of the collective, at least if we accept the principle that fair equality of rights and duties should be applied in properly regulated professional settings. If a certain service is part of a profession, someone who chooses that profession has no legitimate claim to be exempted, given that after their conscientious objection has been granted their work conditions (e.g., their salary) would normally remain the same as those of someone who does provide the service in question. So, these two individuals would have equal professional rights (e.g., to a certain salary) but unequal professional burdens. (Giubilini and Savulescu, 237–238)

In other words, if conscientious objectors receive equal pay, they have equal duties to perform abortions.

Here we have to consider what is meant by *duty*. Do health care professionals have a moral duty to perform abortions? An affirmative answer presupposes that performing abortions is morally permissible, since you cannot have a moral duty to do what is morally wrong. So, to establish this sense of duty, critics of conscience rights need to establish that abortion is morally permissible. But if it is true, as I’ve argued at length,<sup>6</sup> that abortion is ethically impermissible, there can be no moral duty to perform one. A doctor could still have a legal duty to perform abortions. But, in fact, health care professionals have no such obligation in many countries (like the United States and Italy), where the law protects conscientious objection to performing abortions, which is to say that there is no legal duty to perform an abortion.

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5. G. E. M. Anscombe, “Modern Moral Philosophy,” *Philosophy* 33.124 (January 1958): 16.

6. See Christopher Kaczor, *The Ethics of Abortion: Women’s Rights, Human Life, and the Question of Justice*, 3rd ed. (New York: Routledge, 2022).

What should be said about Giubilini and Savulescu's case in which an abortion provider and a conscientious objector receive an equal salary but don't have the same burden of providing abortions? Health care professionals and their employers have agreed in their signed contracts to the terms of service, which themselves are bound by the law. So (at least in countries like the United State and Italy), the terms of service cannot include a duty to perform abortions, for it is against the law to force others to perform them. Moreover, when making a contract, the health care professional and the employer agree to the terms. A conscientious objector does not agree to perform abortions, just as, perhaps, certain employees don't agree to work on Saturdays, make house calls, or perform colonoscopies. If the employer accepts the conditions of employment insisted upon by the employee, then other things being equal, the salary is fair.

In a free market, there is no abstract "fair salary" unrelated to the agreement made between employee and employer. So, if an abortionist and a conscientious objector receive an equal salary based on what each agreed to with their employer, then in a free market, *ceteris paribus* both agreements are fair. But let's assume for the sake of argument that a fair salary is not related to what the parties agree to in their contract. At work in Giubilini and Savulescu's argument from fairness is an assumption the "fair" salary means that the employees getting the same salary must be providing exactly the same services. This is unreasonable. Let's say ten doctors are working in a clinic. They are paid equally, and they provide commensurate work all day long. Why should one doctor be penalized for the kind of work that she is doing? If one doctor chooses to perform abortions all day long, and another doctor chooses to deliver babies all day long, they have both provided services all day long. So, other things being equal, they have both earned their wage.

This point can be made with cases that have nothing to do with conscientious objection. Two doctors work for the same salary. One loves working with kids, and the other loves working with the elderly. So, they split up their jobs accordingly. One is not equally burdened with kids, and the other is not equally burdened with the elderly. Despite not providing exactly the same services, they provide comparable services and deserve a comparable wage.

In other words, Giubilini and Savulescu's argument seems to assume that if you are not performing abortions, then you are not shouldering your share of the burden. When performing abortions, the abortionist isn't delivering babies and so isn't shouldering that part of the burden of health care professionals. Doctors doing one procedure cannot at the same time be performing another procedure, and so they aren't shouldering the burdens of the procedure they aren't doing. But so long as these health care professionals are shouldering commensurate overall burdens, they should receive a commensurate overall salary. Giubilini and Savulescu's argument fails to account for the fact that conscientiously objecting doctors can be shouldering commensurate overall burdens (in delivering babies, performing exams, etc.), so they deserve a commensurate overall salary.

Giubilini and Savulescu's argument continues, "Appealing to freedom of conscience and religion to defend conscientious objection in healthcare is a form of 'conscience absolutism' which mistakenly presupposes that certain rights are absolute" (Giubilini and Savulescu, 240). As utilitarian consequentialists, Giubilini

and Savulescu reject absolute rights of any kind, since what is right on a consequentialist view involves a maximizing calculus that cannot in principle protect basic rights. If judicial execution of an innocent person is what is needed to bring about the greatest happiness for the greatest number, then judicial execution of an innocent person is our moral duty.

This perspective is exemplified in the thought of Jeremy Bentham, one of the fathers of utilitarianism, whose rejection of absolute, or inalienable, rights is illustrated in his collaboration on John Lind's criticism of the Declaration of Independence: "The opinions of the modern Americans on Government, like those of their good ancestors on witchcraft, would be too ridiculous to deserve any notice, if like them too, contemptible and extravagant as they be, they had not led to the most serious of evils."<sup>7</sup> Natural rights are no rights at all, insofar as they are understood to be prior to law and government. Such rights, he thinks, are like "a species of cold heat, a sort of dry moisture, and kind of resplendent darkness."<sup>8</sup> So, on Bentham's view, "That which has no existence [i.e., natural rights] cannot be destroyed—that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense—nonsense upon stilts."<sup>9</sup> At best, a consequentialist could endorse prima facie rights that can be overridden whenever the greatest happiness for the greatest number requires it.<sup>10</sup>

By contrast, the moral framework of many conscientious objectors is non-consequentialist. Like St. Augustine, St. Thomas Aquinas, and Immanuel Kant, they hold that certain actions ought not be done whatever the consequences, and so there exist absolute, natural rights for individuals (such the right of the innocent not to be intentionally killed). Obviously, to adjudicate between consequentialism and non-consequentialism falls outside the scope of a short essay like this one.<sup>11</sup> But if there are some absolute rights, would the right not to perform abortion be one of them? Yes, both because the right of the innocent person not to be intentionally killed is an absolute, and because there is an absolute moral right not to do what is morally wrong. So, Giubilini and Savulescu's argument rests on a consequentialist framework that is incompatible both with the Augustinian, Thomistic, Kantian beliefs of

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7. John Lind, "Short Review of the Declaration," in *An Answer to the Declaration of the American Congress*, 4th ed. (London: Cadell, Walter, and Sewell, 1776), 119. See also J. H. Burns, "Bentham's Critique of Political Fallacies," in *Jeremy Bentham: Ten Critical Essays*, ed. Bhikhu Parekh (London: Frank Cass, 1974), 156.

8. Jeremy Bentham, "Supply without Burden," cited in H. L. A. Hart, "Bentham and the United States of America," *Journal of Law and Economics* 19.3 (October 1976): 550.

9. Jeremy Bentham, "A Critical Examination of the Declaration of Rights," in *The Works of Jeremy Bentham*, vol. 2, ed. John Bowring (London: Simpkin, Marshall, and Co., 1843), 501.

10. A rule consequentialist might object, but I'm not convinced that rule consequentialism doesn't devolve into act consequentialism.

11. I have, however, explored aspects of this debate elsewhere. See Christopher Kaczor, *Proportionalism and the Natural Law Tradition* (Washington, DC: Catholic University of America Press, 2010).



many conscientious objectors and with the American tradition as exemplified in the Declaration of Independence as well as with the UN Declaration on Human Rights.

Finally, it is important to make clear the implications of Giubilini and Savulescu's rejection of the right to conscientious objection. They write, "We have suggested above how these types of interests could conflict with a patient's best interest, for instance the best interest of a woman who needs and autonomously requests an abortion" (Giubilini and Savulescu, 237). The assumption of this argument, that abortion is in the best interest of woman, is part of a wider assumption that they make—namely, that the woman's interest and the doctor's interest are the only two interests at stake. Giubilini and Savulescu simply ignore the interest of the human being in utero to live. Now, of course, the human being in utero does not have a subjective interest in living—that is to say, the human being in utero, as well as after birth, does not know that she is alive and does not value (in a subjective sense) her continuing to live. Since she lacks these characteristics, Giubilini holds that newborns are not persons, and that "since non-persons have no moral rights to life, there are no reasons for banning after-birth abortions."<sup>12</sup> If this view is correct, it follows that Giubilini and Savulescu would remove the right of conscientious objection to committing infanticide. But it is hard to believe that doctors should be forced to kill babies after they are born or leave the medical profession.

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