The Imperative of Conscientious Objection in Medical Practice

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Abstract. In response to a growing movement opposed to conscientious objection in medicine, the medical profession should resist the privatization of conscience in general and accept the challenge, presented by conscientious objection, of rethinking its practices and being true to its calling. These claims are informed by the traditional understanding of conscience and the thought of Jürgen Habermas on the relevance of religious truths in public debate and the legitimacy of public dissent. *National Catholic Bioethics Quarterly* 18.4 (Winter 2018): 611–618.

In 2006, Julian Savulescu outlined his case against conscientious objection in health care in a controversial submission to the *British Medical Journal*.[1] At the time, his opinions provoked fierce criticism, but in recent times, they have found increasing favor[2] and have even become enshrined as law in some parts of the

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1. Julian Savulescu, "Conscientious Objection in Medicine," *British Medical Journal* 332.4 (February 2006): 294–297,doi: 10.1136/bmj.332.7536.294.

2. Julian Savulescu and Udo Schuklenk, "Doctors Have No Right to Refuse Medical Assistance in Dying, Abortion or Contraception," *Bioethics* 31.3 (March 2017): 162–170, doi: 10.1111/bioe.12288; Alberto Giubilini and Julian Savulescu, "Conscientious Objection in Healthcare: Problems and Perspectives," *Cambridge Quarterly of Healthcare Ethics* 26.1

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world.[3] Contrary to Savulescu's concern that conscientious objection threatens the unity and professionalism of medical practice, freedom of conscience is crucial to the discernment of the contemporary role of medicine.

The case against conscientious objection in medical practice embraces a simple syllogism: (1) the medical profession is guided by legal, if not universally accepted practices, which are directed toward the well-being of patients; (2) the decision to enter the medical profession is voluntary, and no one is forced to become a doctor or nurse; therefore, (3) if one is not willing to assume the responsibilities and expectations of a doctor or nurse, one should seek another profession. In a more recent article in the *New England Journal of Medicine*, Ronit Stahl and Ezekiel Emanuel illustrate their argument by differentiating between physicians and conscripts to military service: "Unlike conscripted soldiers, health care professionals voluntarily choose their roles and thus become obligated to provide, perform, and refer patients for interventions according to the standards of the profession."[4] Accordingly, they conclude that health care professionals who cannot abide by "accepted" practices in contemporary medicine face two choices: "Select an area of medicine … that will not put them in situations that conflict with their personal morality or, if there is no such area, leave the profession."[5]

One might concede that conscientious objection in medical practice is different from objection to military service. One also might be willing to concede that assuming the role of a medical professional implies abiding by a code of practice and an ethos that characterizes the profession. In this, Savulescu rightly points out that being a doctor means going beyond what is subjective and personal. It means taking on a persona that has an identity of its own, one that carries expectations and responsibilities and demands certain commitments that are part of what it means to be a doctor.[6] But what is the content of such expectations and responsibilities, and how are they decided?

In an attempt to determine what these expectations consist of, Stahl and Emanuel, following John Rawls, speak of "reflective equilibrium"[7]: a process of debate and discernment in which "the profession, rather than the individual practitioner, elucidates

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(January 2017): 3–5, https://doi.org/10.1017/S096318011600075X; and Ronit Y. Stahl and Ezekiel J. Emanuel, "Physicians, Not Conscripts: Conscientious Objection in Health Care," *New England Journal of Medicine* 376.14 (April 6, 2017): 1380–1385, doi: 10.1056/NEJMsb1612472.

3. For example, employees in Sweden and Finland have no legal right to conscientious objection. See Savulescu and Schuklenk, "Doctors Have No Right to Refuse Medical Assistance in Dying," 162; and Joseph Meaney, Marina Casini, and Antonio G. Spagnolo, "Objective Reasons for Conscientious Objection in Health Care," *National Catholic Bioethics Quarterly* 12.4 (Winter 2012): 613.

4. Stahl and Emanuel, "Physicians, Not Conscripts," 1380.

5. Ibid., 1383.

6. Savulescu, "Conscientious Objection in Medicine," 295.

7. John Rawls, *A Theory of Justice*, revised ed. (Cambridge, MA: Belknap Press, 1999), 42–45.

the interpretation and limits of the primary interest" and "establishes professional obligations for health care providers regardless of their personal beliefs."[8] These are then enshrined in codes of ethical practice or law, whose primary intention is to uphold the well-being of patients. Savulescu takes a more legalistic line, according to which the responsibilities of a doctor toward the health of his or her patient are determined by what is legally permissible. He insists that the appropriateness of medical care should be determined by (1) the law, (2) the just distribution of finite medical resources, and (3) the patient's informed desires. If individuals "are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors."[9] Because patients have a right to be informed of what services are legally open to them, anything that hinders the "quality, efficiency, or equitable delivery of a service … should not be tolerated."[10]

But what does this mean for conscience? Does the subjugation of personal belief to professional consensus or the law mean that individual conscience has no voice? Or could the voice of conscience find a place at the table of reflective discourse in the process of reaching consensus—a process that, by admission, continues in the search for ethical solutions?

What Is Conscience?

Before attempting to answer these questions, we should ask ourselves what is meant by *conscience*. Those who deny a right to conscientious objection in medical practice conflate conscience with self-interest and personal belief. They claim that conscientious objections are based on personal whim, "doctors' idiosyncratic moral convictions,"[11] or religious beliefs that have no direct bearing on modern medical practice.[12] However, this reduction of conscience to the purely subjective realm, and its alienation from concrete ethical decisions, are not easily reconciled with the traditional role of conscience.

Medieval thinkers recognized two levels of conscience: *synderesis* and *conscientia*. In the *Summa theologiae*, St. Thomas Aquinas distinguishes them respectively as a *habit* and an *act* of practical reason.[13] In the first place, as a habit of practical

8. Stahl and Emanuel, "Physicians, Not Conscripts," 1382.

9. Savulescu, "Conscientious Objection in Medicine," 294.

10. Ibid., 296.

11. Savulescu and Schuklenk, "Doctors Have No Right to Refuse Medical Assistance in Dying," 163.

12. Udo Schuklenk and Ricardo Smalling assert that "conscientiously objecting health-care professionals can have various rationales to support their opposition to the participation of doctors in particular medical procedures. They include typically a recourse to tradition, the Hippocratic Oath, the Bible, the Quran and any number of other documents that have no legitimate bearing on the practice of 21st century medicine." Udo Schuklenk and Ricardo Smalling, "Why Medical Professionals Have No Moral Claim to Conscientious Objection Accommodation in Liberal Democracies," *Journal of Medical Ethics* 43.4 (April 2017): 235, doi: 10.1136/medethics-2016-103560.

13. Thomas Aquinas, *Summa theologiae* I.79.12 and 13.

reason, *synderesis* participates in an objective moral truth that preexists the individual conscience. It is that inner consciousness of the law that St. Paul speaks of in his letter to the Romans.[14] Aquinas calls it a natural habit that "incites to good" and "murmurs at evil."[15] It is an expression of our creation in the image of God, with the freedom, intellect, and will to know good and evil. Servais Pinckaers further interprets it as "the original moral light in the depths of the human mind and heart."[16]

For his part, Joseph Cardinal Ratzinger refers to this same power of conscience by a different name, adopting the Platonic term *anamnesis*, as "something like an original memory of the good and true." His preference for *anamnesis* stems from its harmony with biblical motifs of our creation in the divine image toward which we tend: "This *anamnesis* of the origin, which results from the godlike constitution of our being, is not a conceptually articulated knowing, a store of retrievable contents. It is so to speak an inner sense, a capacity to recall, so that the one whom it addresses, if he is not turned in on himself, hears its echo from within. He sees: 'That's it! That is what my nature points to and seeks.'"[17] Accordingly, the dignity of the human conscience exists in its capacity to respond to an objective truth—not as something self-willed or personal within the context of a plurality of opinions, but as that privileged place in which the voice of reason, of truth, or God speaks within the depths of the individual soul.

The second level of conscience, termed *conscientia*, is concerned with judgment and decision, applying the recalled "memory" of good and evil to particular situations. In this orientation toward judgment and decision, we more clearly recognize the practical nature of conscience and of morality in general.[18] As already noted, *conscientia* is not a habit but an act: "Not a *habitus*, that is, a lasting ontic quality of man, but *actus*, an event in execution."[19] The content of conscience is not simply theoretical supposition—not "a store of retrievable contents," as Ratzinger writes, amassed through a strict application of the speculative reason—but a word of truth that informs judgment and guides action.

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14. Rom. 2:14–15. "When Gentiles who have not the law do by nature what the law requires, they are a law to themselves, even though they do not have the law. They show that what the law requires is written on their hearts, while their conscience also bears witness."

15. Aquinas, *Summa theologiae* I.79.12.

16. Servais Pinckaers, "Conscience and Christian Tradition," in *The Pinckaers Reader: Renewing Thomistic Moral Theology*, ed. John Berkman and Craig Steven Titus, trans. Mary Thomas Noble et al. (Washington, DC: Catholic University of America Press, 2005), 330.

17. Joseph Ratzinger, "Conscience and Truth," *Communio* 37.3 (Fall 2010): 535. The reason for Ratzinger's preference for *anamnesis* over *synderesis* is twofold. First, he acknowledges the problematic use of the term *synderesis* in tradition, in which its meaning was often unclear "and for this reason became a hindrance to a careful development of this essential aspect of the whole question of conscience." Second, because the concept of *anamnesis* "harmonizes with key motifs of biblical thought and the anthropology derived from it" (534).

18. Ibid., 538. Following Aquinas, Ratzinger underlines the practical reasoning that lies behind the act of conscience by noting that the conclusions reached "do not come from mere knowing or thinking."

19. Ibid., 537.

However, this practical orientation of conscience, which demands a decision on what should or should not be done in a particular situation, would seem to contradict contemporary assertions that convictions of conscience have no bearing on medical practice. Prevented from being expressed in act, conscience remains locked within the personal consciousness, with little or no correlation to one's public persona. A form of dualism therefore prevails in which the private self—absorbed in its thoughts and convictions—finds no means of expression in the public realm. Conscience, in this sense, may well concern one's psychological reaction to different scenarios but has no part in forming one's judgment or directing action.

Privatization of Conscience

The rejection of a traditional notion of conscience in favor of a privatized one places the objections of conscience out of reasoned debate, and decisions of conscience are deemed inaccessible or impossible to evaluate.[20] The presumption is that personal belief and religious faith are not subject to reason or scrutiny, and therefore the directives of conscience that flow from them cannot be reasonably engaged. Admittedly, this forced privatization of conscience is part of a bigger picture in which the narrowing of our consciousness to the positivism of what is immediate and demonstrable has excluded the possibility of religious truth. As noted already, such truths are conflated with self-interest, denied entry into open debate, and silenced when they try to contribute to knowledge and truth.

While we should expect religious leaders to rail against this sidelining of faith and morals, the relevance of religion to public life finds unexpected support from the German philosopher Jürgen Habermas. It is unexpected because Habermas enthusiastically embraces the secularization of the modern state and the attendant abandonment of religious claims "to a monopoly on interpretation and to a comprehensive structuring of human life."[21] In a post-religious society, one must expect and tolerate a plurality of worldviews. However, to sustain this plurality, Habermas insists that the liberal state itself should be neutral. This neutrality "guarantees the same ethical freedom to every citizen." It ensures the possibility for diverse entities to "embed" into the culture, with "the possibility of bringing their own influence to bear on society as a whole, via the public political sphere."[22]

However, to have influence within a flourishing and truly pluralistic society, diverse worldviews cannot remain simply private or personal. They cannot be limited to self-interest. Nor should they be silenced by what Habermas terms "the political

20. Schuklenk and Smalling, "Why Medical Professionals Have No Moral Claim," 3: "Secular liberal democracies do not typically test whether the views conscientious objectors profess to subscribe to are defensible." See also Savulescu and Schuklenk, "Doctors Have No Right to Refuse Medical Assistance in Dying," 167.

21. Jürgen Habermas, "Pre-political Foundations of the Democratic Constitutional State?," in *The Dialectics of Secularization: On Reason and Religion*, ed. Florian Schuller (San Francisco: Ignatius Press, 2006), 48.

22. Ibid., 49, 51.

universalization of a secularist world view."[23] Disagreement between secular and religious views might be expected in a pluralistic society. But, as Habermas notes, such disagreement "deserves to be called 'rational' only when secular knowledge, too, grants that religious convictions have an epistemological status that is not purely and simply irrational." In the neutral playing field of public debate, Habermas insists that those from a secular perspective "must not deny in principle that religious images of the world have the potential to express truth."[24] In practice, however, the modern pluralist state falls short of a neutral playing field. Ratzinger, who engaged Habermas on precisely this topic (the relationship between reason and religion, and the "pre-political" foundations of the modern state), maintains that reason becomes "pathological" when it is closed to realities that lie beyond its competence.[25] It tends toward a form of totalitarianism, oppressive in its intolerance of alternative views, especially those which are expressed in action. We see it in the current efforts to silence conscience.

Legitimate Expression of Civil Disobedience

In this context, safeguarding conscientious objection becomes imperative. It must be given space to speak for truth and find expression in judgments that direct action. Unwilling to be silenced by professional consensus and positive law, conscience must assume its prophetic voice in challenging the legitimacy of prescribed practices. Critics of conscientious objection in medical practice would limit this contribution to lobbying for legal reform. But as directed toward action, the voice of conscience must also find expression in act. In this, a parallel can be drawn between conscientious objection in professional practice and nonviolent civil disobedience.

Habermas notes that opponents of civil disobedience worry that "those who break laws under appeal to their conscience arrogate to themselves rights which our democratic constitutional order can afford to no one in order to insure the security and freedom of all citizens."[26] In a similar way, opponents of conscientious objection in medical practice maintain that it threatens the consensus of professional standards that aim to safeguard the practice of medicine, thus undermining the professionalism that we expect of physicians and nurses.[27] Habermas, however, disagrees. He is not convinced that civil disobedience intrinsically threatens the moral and constitutional order of society by challenging its laws. On the contrary, he suggests that the capacity to accommodate acts of civil disobedience is constitutive of the democratic state.

23. Ibid., 51.

24. Ibid., 50–51.

25. Joseph Ratzinger, "That Which Holds the World Together: The Pre-political Moral Foundations of a Free State," in Schuller, *Dialectics of Secularization*, 77.

26. Jürgen Habermas, "Civil Disobedience: Litmus Test for the Democratic Constitutional State," *Berkeley Journal of Sociology* 30 (1985): 101.

27. Highlighting their intolerance of such a threat to professional standards, Stahl and Emanuel write, "Objections to providing patients interventions that are at the core of medical practice—interventions that the profession deems to be effective, ethical, and standard treatments—is unjustifiable." Stahl and Emanuel, "Physicians, Not Conscripts," 1383.

Habermas is not an advocate of anarchy. Rather, he insists that a legitimate and morally justifiable act of civil disobedience should conform to certain criteria: (1) its foundation must go beyond private conviction and self-interest; (2) it must be public; (3) while challenging an individual legal norm, it must not undermine the law as a whole; (4) one must accept the legal consequences of the transgression; (5) the act of disobedience must be essentially symbolic in character, and thus (6) it must be achieved through nonviolent means.[28] When meeting these criteria, Habermas insists that, rather than threatening democracy, "civil disobedience actually constitutes a litmus test for the appropriate understanding of the moral foundations of democracy."[29] Since the constitutional state is constantly in a process of becoming, it must be willing to legitimize its existence and rethink its values.[30] And while the processes of parliamentary representation and legal reform might be the ordinary way of achieving that end, the place of civil disobedience, even as a symbolic gesture of awakening the moral conscience of society, must be preserved.

In most instances, conscientious objection in medical practice does not constitute breaking the law.[31] Instead, it involves a choice not to offer a service that, while legal, does not (according to conscience) correspond to the good of the patient or the practice of medicine. However, the relationship of conscientious objection to the practice of medicine is similar to that between civil disobedience and the democratic state. Just as the legitimacy of the constitutional state must be constantly rethought, so too medical practice requires scrutiny to justify itself (in a process similar to that already outlined by Stahl and Emanuel above). In this process, conscientious objection is an important means of spurring the profession to reconsider certain practices in light of fundamental truths about the human person. It is not simply a matter

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28. Habermas, "Civil Disobedience," 100. "Civil disobedience is a morally *justified* protest which may not be founded only on private convictions or individual self-interests; it is a *public* act which, as a rule, is announced in advance and which the police can control as it occurs; it includes the *premeditated transgression* of individual legal norms without calling into question obedience to the rule of law as a whole; it demands the readiness to *accept* the legal *consequences* of the transgression of those norms; the infraction by which civil disobedience is expressed has an exclusively *symbolic character*—hence is derived the restriction to *nonviolent* means of protest" (original emphasis). Compare with Rawls, *Theory of Justice*, 319–323.

29. Habermas, "Civil Disobedience," 101.

30. Ibid., 104. "The constitutional state as a whole appears from this historical perspective not as a finished product, but rather as a susceptible, precarious undertaking which is constructed for the purpose of establishing or maintaining, renewing or broadening a legitimate legal order under constantly changing circumstances."

31. This is not always the case, however. The situation in Sweden and Finland has been noted above. In Victoria, Australia, registered medical practitioners and nurses have certain obligations: "Despite any conscientious objection to abortion, a registered nurse is under a duty to assist a registered medical practitioner in performing an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman." Parliament of Victoria, Abortion Law Reform Act (2008), 8.4; see also 8.3.

of preserving the dignity of the individual conscience, but of challenging medical practice to be true to itself and to its service of human flourishing.

In response to another criticism raised by opponents of conscientious objection, this concern for the truth of the human person and his or her flourishing will also help determine the legitimacy of individual claims of conscientious objection. If anarchy in the health sector is to be avoided, the individual conscience must be drawn out from what is purely subjective into the light of objectivity. In this vein, Bernard Schumacher speaks of the need to move beyond the subjectivity of individual conscience toward an integration with the "other": a "silent listening to the otherness of the world" and the subjection of conscience to "a certain rigor of thought and judgment." Schumacher refers to this process as the "de-centering of self," which enables one to give a justification for the contents of conscience.[32]

According to Joseph Meaney and colleagues, such justification of legitimate claims to conscience will be founded in "an objectively important basic value that is recognized in natural law or in the traditional foundations of a society and not merely by subjective individual judgment."[33] In the context of medical practice, life itself, on which all other human goods and rights depend, is that basic value. In practice, therefore, no justifiable reason could be given for denying a patient treatment on the basis of his or her race, since such a decision would undermine a fundamental human right of equality. But good reasons could be offered for not participating in an abortion, which would deny the existence of a human being. As Christopher Cowley adds, "A doctor *can* refer to the wrongness of abortion as an intelligible reason for refusing a patient, without thereby losing moral and intellectual credibility. There is a real debate to be had about abortion, whereas there is no debate about racism."[34]

Imperative of Conscience

The debate over conscientious objection must be returned to the light of reasoned principles that are foundational for the practice of medicine and the promotion of the common good. As Habermas insists, "The conscience of the citizen is not just a private affair; it also extends to those matters which concern all citizens."[35]

As has been repeatedly stated, the defense of conscientious objection is not primarily concerned with personal liberties or subjective rights. It concerns the truth of the human person to which conscience bears witness. Conscientious objection has a rightful place in the public arena. It positively contributes to the process of self-knowledge and correction in medical practice, and we must not allow its prophetic voice to be silenced by the increasing clamor of intolerance which characterizes the current debate.

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32. Bernard N. Schumacher, "The Dictatorship of the Conscience," *Nova et Vetera* 15.2 (Spring 2017): 570, 576, 577.

33. Meaney, Casini, and Spagnolo, "Objective Reasons for Conscientious Objection in Health Care," 618.

34. Christopher Cowley, "A Defence of Conscientious Objection in Medicine: A Reply to Schuklenk and Savulescu," *Bioethics* 30.5 (December 2016): 360, original emphasis, doi: 10.1111/bioe.12233.

35. Habermas, "Civil Disobedience," 107.