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On the Scope of a Professional's Right of Conscience

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a professional's right of conscience. However, a number of prominent applied ethicists also endorse a second constraint on the professional's right of conscience, arguing that it extends only to certain kinds of beliefs; specifically, only those that are reasonable, or integral to the ethical practice of medicine, or not at odds with a principle of non-discrimination. This I think mistaken. As I will now demonstrate, if the fundamental moral importance of preserving an agent's integrity provides the justificatory basis for a professional's right of conscience, a position most of the authors I consider here explicitly adopt, then medical professionals enjoy a *pro tanto* or defeasible claim to accommodation by the state regardless of the content of the belief to which they wish to remain true.

One of the most common arguments offered by contemporary writers in defense of a medical professional's right of conscience appeals to the fundamental moral importance of preserving an agent's integrity.² A person acts with integrity in a particular case if and only if she conforms to certain standards that she believes apply to her in that case. To compromise one's integrity, then, is to fail to conform to a certain standard in circumstances where one believes that one could, and should, do so. Though these standards need not be moral ones—for example, a musician might compromise her integrity as an artist by “selling out” to a large corporation—I will focus here solely on moral standards, and so moral integrity. The preservation of a person's moral integrity is of greater prudential and moral concern the more central conformity to a particular moral standard is to that person's identity or sense of self, and her conception of what makes her life meaningful or worthwhile. If an agent betrays one or more of her core moral commitments, then her ability to lead what she believes to be a good life will be grievously harmed. Typically, when a person asserts that she cannot in good conscience perform a certain action, what she means is that were she to do so she would compromise her moral integrity.

Most people will readily agree that states have a duty to ensure that their subjects enjoy their basic moral rights. Suppose, somewhat more controversially, that people have basic moral rights to those goods in the absence of which it is extremely unlikely that they will live a good life, whatever its specifics. I suggest that the preservation of an agent's integrity constitutes a necessary condition for living a good life, and therefore it is something to which all people have a basic moral right. It follows that if it is to be legitimate (and perhaps if it is to be just), the state must at least make a good faith effort to protect its subjects' attempts to act with integrity. That is, it must grant them a right of conscience. This right is not absolute; rather, in some cases the moral demands it generates will be outweighed or defeated by duties that correlate to other basic moral rights, or perhaps other types of moral considerations. That is why nearly all theorists (though, alas, not all laws) characterize the right of conscience as a conditional, qualified, or *prima facie* one. Nevertheless, the critical importance of acting with integrity for a person's ability to lead a good life grounds a weighty moral claim against the state that it refrain from compelling people to betray their deepest commitments.³

The foregoing account of the right of conscience clearly justifies the state in investigating the sincerity of a conscientious objector's belief. After all, if that person does not truly believe that his legal and professional obligations are at odds with his moral ones, then acting as the law requires will not actually cause him to compromise his integrity. Grounding a right of conscience in the fundamental importance of preserving an agent's integrity also justifies the state in exploring the centrality of the commitment threatened by compliance with the law to the agent's sense of self and her understanding of

On the Scope of a Professional's Right of Conscience

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Under what conditions, if any, do medical professionals enjoy a right of conscience? That is, when must a just state accommodate a physician's, pharmacist's, or other medical professional's refusal to provide legally and professionally sanctioned services to which she morally objects; for example, by enacting laws that enable her to do so without fear of losing her job or her professional privileges?¹ Recent assertions by several pharmacists of a right to conscientiously refuse to fill prescriptions for the so-called morning-after pill, and by a California fertility doctor of a right to conscientiously refuse to provide fertility treatment to a lesbian, have once again made this question a prominent topic of discussion amongst philosophers and professional ethicists. Nearly all argue (correctly, in my view) that if it entails the imposition of excessive burdens on others, then the state may justifiably refuse to recognize

life's meaning and worth. The more peripheral compliance with the standard in question is to a person's self-worth, self-respect, and ability to lead a good life, the less weight her right of conscience will carry in cases where it conflicts with other moral considerations, and vice versa. However, nothing in the argument from integrity warrants the state making its accommodation of a conscientious objector conditional on the justifiability or reasonableness of the commitment *she believes* she will betray if she obeys the law. The point of a right of conscience is to protect a person's ability to conform to those standards she believes are binding on her, regardless of whether they actually are. All the state need ascertain, therefore, is that the agent sincerely believes that complying with the law will require her to violate certain moral commitments, in which case the law threatens her integrity. This does not mean that the state should rescind from making any judgments of moral truth or rational justifiability; it will (or at least should) do so when it legislates, and it will (or should) do so when, in cases of conflict, it balances the professional's right of conscience against competing moral considerations. Nevertheless, if the fundamental moral importance of preserving an agent's integrity does provide a sufficient justification for a conditional right of conscience, then it does so for any belief an agent might have, no matter how unreasonable or reprehensible it may be.⁴

Dan Brock explicitly endorses the argument from integrity for a conditional right of conscience. Preserving an agent's integrity, he writes, "gives others reason to respect her doing so [i.e., not violating her moral commitments], not because those commitments must be true or justified, but because the maintenance of moral integrity is an important value, central to one's status as a moral person."⁵ Yet immediately after presenting this rationale for a right of conscience, he maintains that a white physician who sincerely believes in the immorality of the mixing of the races lacks even a conditional claim to accommodation by his employer, the professional organizations to which he belongs, or the state that (indirectly) licenses him to practice medicine. Why? Brock answers as follows:

a social consensus (not to say unanimity) exists in the United States that racial discrimination in access to services like health care is unethical, and this is reflected in the law as well. Most people would consider Dr. A. [the racist physician] unjustly prejudiced, despite his offering a moral or religious defense of his position. Dr. A's belief does not deserve respect, even if his moral integrity does. Public policy holds that social justice requires prohibiting this form of discrimination and that if Dr. A's moral beliefs and integrity are in conflict with this policy, they and not the policy must give way.⁶

By itself, the fact that most people think Dr. A's moral belief mistaken does not justify denying him even a conditional right of conscience. After all, a liberal state guarantees its citizens a great deal of freedom to act in ways the majority believes to be immoral. More importantly, given that Brock thinks the right of conscience has its justificatory basis in the importance of acting with integrity, and that the value of acting with integrity does not depend on the truth or justifiability of a person's commitments, the unjustly prejudicial nature of Dr. A's beliefs makes no difference to his claim to accommodation. While Brock rightly claims that "Dr. A's belief does not deserve respect, even if his moral integrity does," he fails to draw the proper conclusion from this observation, which is that respect for Dr. A's moral integrity requires that the state acknowledge Dr. A's conditional right to act as his conscience dictates.

In many circumstances, the cost to patients in need of the services that Dr. A can provide, and/or the cost to the state (and

so its citizens) of accommodating Dr. A's conscientious refusal to treat black patients may be excessive. That is, accommodating Dr. A's conscience may make it unreasonably burdensome for black patients to get the medical treatment to which they are morally and legally entitled, or for the state to ensure they have access to such treatment. When this is so, the state will not wrong Dr. A if it forces him to choose between providing legal services he believes to be immoral or exiting the medical profession (or at least the particular professional role he currently occupies).⁷ Yet there is no reason to assume that the cost of accommodating a professional's desire to conform to a principle that conflicts with legal and professional prohibitions on discrimination will always be excessive. Consider, for example, *Benitez v. NCWC*, a recent case in California in which two physicians at a fertility clinic conscientiously refused to provide treatment for an unmarried lesbian woman. The actual grounds for the physicians' refusal to treat Benitez are a matter of dispute; they claimed to object to providing services to unmarried women, while Benitez claimed they discriminated against her on the basis of her sexual orientation. For the purposes of this paper, we can simply stipulate that the physicians conscientiously objected to using their services to help homosexuals have children, say because they thought doing so would make them complicit in a sinful activity. As Jacob M. Appel points out, neither a commitment to ensuring the availability of fertility treatment for lesbians, nor the harm caused by the social stigma and discomfort associated with being refused care, warrant the state's failure to accommodate the physicians' desire to remain true to their beliefs.⁸ Benitez had no difficulty finding another physician willing to provide the services she sought. Nor is there any evidence that the number of fertility doctors conscientiously opposed to treating lesbians is large enough that some prospective homosexual patients are likely to have a significant burden imposed upon them if the state acknowledges a right of conscience in such cases, even if Benitez did not. As for the discomfort of being refused care, Appel suggests that it is (or could be made to be) relatively easy for lesbians seeking fertility treatment to identify and avoid those physicians that refuse to serve them. It might be said in response that merely knowing that you cannot obtain services from certain medical professionals because they think a central feature of your way of life immoral harms a person. But even if it does, it is not obvious that this setback to a lesbian's ability to lead a life she finds meaningful or worthwhile is weighty enough to justify the state's refusal to accommodate a physician's conscience.

Mark Wicclair also maintains that the importance of protecting an agent's integrity provides the justificatory basis for a physician's conditional right of conscience. The moral weight of a conscience-based objection to performing a legal service, Wicclair writes, "can be grounded in the value of moral integrity and self-respect as well as the significant harm associated with self-betrayal and loss of self-respect."⁹ Like Brock, however, Wicclair also attempts to limit the kind of commitments for which a medical professional may seek accommodation. Specifically, he contends that a physician's assertion of a right not to provide a particular treatment to which he conscientiously objects carries moral weight only if the standard he seeks to uphold references the goals and values of medicine. To illustrate, on Wicclair's account a physician enjoys a conditional moral claim to exemption from a legal requirement to provide a given medical service if his reason for doing so appeals to an understanding of the duties to advance patients' interests in life and health that is at odds with the one the law reflects. Brock's racist doctor, however, lacks even a conditional claim to the state's accommodation of his conscience, since the standard to which he wishes to conform is foreign to the goals

and values of medicine.

Why should our concern with preserving physicians' moral integrity and self-respect, and with protecting them from the significant harm associated with self-betrayal and loss of self-respect, be limited to cases where the objector aims to uphold a commitments that "correspond[s] to one or more core values in medicine?" Surely there is nothing inherently different between the betrayal of principles integral to the ethical practice of medicine and those that are not, such that the former necessarily impose a far greater cost on people than does the latter. Why, then, does *Wicclair* shift from a concern to protect moral integrity *per se* to a concern to protect moral integrity only insofar as the principles to which a physician wishes to conform correspond to a core value in medicine? The answer is that he thinks it necessary to explain why medical professionals ought to enjoy a conditional claim to accommodation when most other professionals (and non-professionals) do not.

Suppose, as is almost always the case, that when an agent's legal and professional obligations conflict with her moral beliefs, she can resolve the conflict and avoid self-betrayal by exiting the profession (or at least that particular role within the profession). In many cases, that is what a person must do if she wishes to preserve her moral integrity. Why is the same not true for medical professionals? Some justification must be given for why the state should acknowledge a conditional right to accommodation for a physician that conscientiously objects to providing certain legal services to her patients, as in the case of a Catholic doctor who thinks abortion is never morally permissible, but not for an advertising executive who conscientiously objects to working on an advertising campaign that promotes smoking because she thinks it would make her complicit in causing tobacco-related harms to people that have not freely and knowingly exposed themselves to the risk of those harms. *Wicclair* argues, correctly in my view, that this differential treatment cannot be grounded in a necessary inequality in the impact that physicians and other professionals can have on others' well-being, autonomy, or life prospects. Whatever wrong or harm is involved in a physician's conscientious refusal to heed a terminally ill patient's request to have his feeding-tube removed may pale in comparison to the harm caused by an advertising campaign encouraging the use of tobacco. Instead, *Wicclair* suggests that a justification for according medical professionals, but not others, a conditional right of conscience can be found in the fact that medicine is a moral enterprise. This means that physicians should act on the basis of their obligations to patients, not self-interest, and that they should conduct themselves according to ethical values and professional standards, rather than as mere technicians providing whatever services their patients demand. What follows from this conception of medicine, *Wicclair* maintains, "is not that physicians should be guided by their personal values, irrespective of their content. Rather, the implication is that physicians should be guided by the goals and values of medicine."¹⁰ Medicine's special moral character, he seems to suggest, explains both why medical professionals, but not others, ought to enjoy a conditional right to accommodation by the state, and why that right encompasses only fidelity to principles that are integral to the practice of medicine.

This argument suffers from two defects. First, *Wicclair* needs to show that in their professional lives physicians should be guided *only* by the goals and values of medicine, so that he can then argue that only appeal to these ends can ground a physician's right of conscience. No such inference follows from his characterization of medicine as a moral enterprise, however. A female doctor who sincerely believes that morality forbids her from treating men, and who asserts a conditional

right to practice in accordance with this belief, acts neither from self-interest nor as a mere technician. Rather, she seeks to uphold the practice of medicine as a moral enterprise *and* conform to a further moral principle that does not correspond to any value in medicine. *Wicclair* might respond that non-discrimination in the provision of treatment is a value integral to the practice of medicine, and cite in support of such a claim the World Medical Association's 1948 Declaration of Geneva, as amended in 1994 and 2005, which states that a physician will not (or, more accurately, should not) permit "considerations of age, disease, or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between [her] duty and [her] patient." Despite the World Medical Association's assertion, one might contest the claim that non-discrimination is a value integral to the practice of medicine, even if it is a true moral principle. More importantly, by hypothesis our physician is not denying that she has some duty to male patients—after all, the right she asserts is a conditional one. What is at issue is the specific content of the physician's duty to male patients. Suppose that the objecting physician acknowledges a duty to ensure that male patients receive the types of treatment she is licensed to provide, but objects only to providing those services herself (as might be the case if her reason for refusing to treat male patients rests on her belief in a duty of sexual modesty). If this is all our physician asserts, then I maintain that either the actions the physician seeks to carry out without penalty do not violate her duty as described in the Declaration of Geneva, or that declaration's characterization of the physician's duty is morally unsound.

Note that I am not claiming that professional medical associations err when they assert that their members act unethically if they discriminate in the provision of their professional services on the basis of race, sex or gender, ethnicity, creed, nationality, political affiliation, or sexual orientation. Rather, I maintain only that even if this assertion is true (as I believe it is), it does not necessarily follow that those physicians who disagree with it have no claim to accommodation by the state or the professional bodies to whom it delegates some of its authority to regulate the practice of medicine.

Recall that *Wicclair* limits a physician's right of conscience to cases of fidelity to a principle consonant with the goals and values of medicine because he thinks it necessary to explain why physicians have a defeasible claim to accommodation by their employer and the state, while advertising executives, and many other professionals and non-professionals, have no such claim. But simply limiting the scope of a right of conscience to certain features that are allegedly unique (or nearly unique) to the medical profession does not suffice to justify such a restriction. Rather, *Wicclair* must explain what is special about these values, such that fidelity to them but not to other values warrants accommodation. His failure to do so constitutes a second shortcoming with his argument. I conclude, therefore, that *Wicclair* fails to establish that when the principle or commitment a physician seeks to uphold does not correspond to a core value in medicine, he or she lacks even a conditional moral claim to accommodation.

Were *Wicclair* to abandon any attempt to defend the current asymmetry in the respective legal accommodations extended to physicians and advertising executives, then it seems he would have no reason to place any constraints on the kind of moral beliefs the desire to remain true to which justifies a moral claim to accommodation. Alternatively, it may be possible to offer a justification for the differential treatment afforded to medical professionals that does not place any restrictions on the sort of commitment for which a physician might seek

accommodation. For instance, differences in the institutional context in which professionals (and non-professionals) practice may justify legal accommodation for some, e.g., physicians that conscientiously object to providing certain treatments, but not others, e.g., advertising executives that conscientiously object to working on tobacco promotion campaigns. Given the highly regulated environment in which medical professionals already practice, it may be possible to implement a scheme for accommodating conscientiously objecting physicians without imposing much cost on potential patients, professional colleagues, employers, taxpayers, or the state. The same may not be true for advertising executives. If so, then the advertising executive's claim to accommodation may be defeated by other moral considerations, such as the cost to employers and to the taxpayer of institutionalizing such a scheme. The key point here is not the truth of these claims regarding the relative costs of accommodating conscientiously objecting physicians and advertising executives. Rather, it is that *if* these claims are true, then the current practice of treating physicians and advertising executives differently may be consistent with according all persons a conditional right of conscience, regardless of the kind of belief they seek to uphold.

Though they are not as clear as Brock and Wicclair, Eva and Hugh LaFollete also appear to endorse the preservation of a person's moral integrity as a sufficient justification for according her a defeasible right of conscience. They write that "individuals want to live their lives as they think best, and for many of us our moral beliefs are especially important," and that we empathize with those who are forced to do what they think immoral.¹¹ Nevertheless, they too argue that the right of conscience does not extend to any and all beliefs to which a person might seek to remain true, even at the expense of violating the law and/or certain professional standards. Instead, they contend that a person enjoys a conditional claim to accommodation only if her beliefs are broadly similar to recognizable moral views, they are ones for which the conscientious objector can offer a defense, and they do not depend on implausible empirical claims or clearly mistaken inferences. As I will explain, however, they are wrong to do so.

Consider, first, LaFollete and LaFollete's claim that "we demand that someone who claims to be taking a stand on conscience has views and employs reasoning reflecting values and empirical beliefs broadly similar to recognizable moral views."¹² They think such a demand justified because

otherwise it makes the notion of a "moral belief" meaningless. If someone said that she was conscientiously opposed to feeding [her] children or stopping at traffic lights, then, barring some powerful explanation, we would not think that they are forwarding moral beliefs, no matter how sincerely uttered. If someone said that she was conscientiously opposed to paying parking fines because it killed humans, then, barring some powerful explanation, we would likewise deny that she is forwarding a moral claim.¹³

No doubt if someone advanced such a claim we would judge it to be seriously mistaken, an obviously false belief. But I see no reason to deny that these are moral beliefs (or, given that the examples are under-described, that they could be). After all, a person may conscientiously object to feeding her children because she believes she has a duty not to do so (just as Abraham believed he had a duty to sacrifice Isaac), or because she thinks parental autonomy encompasses a right to use starvation as a means for disciplining her children. Similarly, she may believe that stopping at traffic lights constitutes the acknowledgment of the state's authority over her, and believe

that she is under a duty to acknowledge no earthly authority. In each case, we can contrast the agent's reason for behaving as she does with prudential reasons a person might have for doing so; for instance, the financial benefits of not having to spend money on her children, or the thrill of running a red light. As long as the contrast with self-interested reasons for action remains, characterizing the objector's beliefs as moral, no matter how strange we may think it, does not render the notion of a moral belief meaningless. As for the third example LaFollete and LaFollete give to support their claim, involving conscientious objection to paying parking fines, it does not even involve a mistaken moral belief (at least if we assume the humans referred to are innocent), but only an erroneous belief regarding the causal connection between the payment of parking fines and the killing of human beings.

Of course, to acknowledge that the examples LaFollete and LaFollete give do constitute moral claims does not commit us to accommodating those who wish to act on them (in violation of the law). Rather, and as should be clear by now, the objector's claim to accommodation must be balanced against competing moral interests, and in each of the examples LaFollete and LaFollete give it seems quite clear that the objector's right of conscience will be defeated or outweighed by some other moral consideration. For example, the state's duty to ensure that the objector's children receive adequate nutrition defeats its duty to accommodate her conscientious objection to her children being fed. Thus LaFollete and LaFollete neither demonstrate that, on pain of rendering the idea of a moral belief meaningless, we must reject as moral those beliefs that are deeply at odds with prevailing views, nor that doing so is necessary to justify the conclusion that certain demands for accommodation clearly ought to be rejected.

Unfortunately, LaFollete and LaFollete's explication of the claim that conscientious objectors must be able to offer a defense of the principle they seek to uphold is brief and somewhat muddled. For example, it is unclear whether a conscientious objector herself must be able to provide a minimally acceptable rational justification for the principle in question, or if it suffices that she is an active member of a community whose leaders can offer such a justification even though she cannot, or weaker still, that it merely be possible for someone to offer such a justification. More importantly, however, LaFollete and LaFollete misidentify the reason the conscientious objector offers the state in support of her claim that it ought to accommodate her. That reason is not the truth or reasonableness of the principles to which she wishes to remain true; rather, it is the importance of preserving her moral integrity, and so her sense of self-worth and of the meaning she finds in the way of life she leads. In seeking accommodation from the state, the conscientious objector does not rest her case on the assertion that compliance with a particular law or professional standard would be wrong.¹⁴ She likely believes that, of course, and if the state fails to accommodate her then that belief will likely figure in an explanation for her subsequent actions and attitudes (e.g., her disobedience to law, or the guilt she feels over having acted as the law requires). Still, the conscientious objector's claim vis-à-vis the state is that she cannot *in good conscience* act as the law or professional code would have her act. This is so because *she believes* that the law or professional code conflicts with what morality truly requires, regardless of whether her belief is warranted. The professional's claim that she cannot obey the law in good conscience highlights the state's reason for accommodating her, namely, its defeasible duty to refrain from compelling agents to act contrary to their sincerely held moral beliefs. What requires a defense, then, is not the particular belief or commitment for which the conscientious objector seeks accommodation, but the claim

that people's interest in maintaining their moral integrity is of sufficient moral importance to ground a conditional right of conscience. This position is one that LaFollete and LaFollete appear prepared to accept.

Indeed, there is some reason to think that it is a conscientious objector's sincerity, and not the reasonableness of her beliefs or the quality of her inferences per se, that concern LaFollete and LaFollete. Having pointed out that conscientious refusal to fill prescriptions for emergency contraception rests on moral and non-moral beliefs that few people in the United States accept, they do not conclude that such refusals are unreasonable and so ought not to be accommodated. Rather, LaFollete and LaFollete write that "although this does not necessarily mean that the advocates of COP [a right of conscience to refuse to fill prescriptions for emergency contraception] do not hold moral views, it explains why their need to demonstrate that these are sincere moral beliefs is even higher than for the COW [a right of conscience to refuse to wage war] advocates."¹⁵ This is a very different position than the one they endorse elsewhere. The reasonableness of a conscientious objector's beliefs is no longer an independent condition for a right of conscience, but instead an evidentiary rule of thumb the state ought to employ in determining whether a conscientious objector satisfies a condition for such a right, namely, that he is sincere when he asserts a belief in the immorality of the law, and that violating it will require him to betray one of his deepest commitments. Whatever the merits of employing such an epistemic rule, it does not entail that there are certain sorts of beliefs that do not fall within the scope of a conditional right of conscience.

The discussion above also explains why neither implausible non-moral claims nor mistaken inferences vitiate a physician's defeasible claim to accommodation. In their discussion of some pharmacists' assertion of a right to conscientiously refuse to fill prescriptions for the morning-after pill, LaFollete and LaFollete challenge the claim that the use of this drug constitutes murder. Robert F. Card pursues this issue in even greater detail, and concludes that emergency contraception is problematic only if contraception itself is considered morally unacceptable.¹⁶ Though I find these arguments compelling, I also think them beside the point when it comes to the question of whether pharmacists enjoy a conditional right to conscientiously refuse to fill prescriptions for emergency contraception. No matter how unreasonable a physician's moral or non-moral beliefs, and no matter how egregiously mistaken her reasoning may be, if she believes that obedience to law will require her to act immorally then the law threatens her integrity. If, as I have argued, the state has a duty not to compel people to compromise their moral integrity, then regardless of the kind of belief to which a person seeks to remain true the state has a moral reason, albeit not a conclusive one, to accommodate her.

Card briefly considers the position defended here and offers three reasons to reject it. The first is a *reductio ad absurdum* argument: if the right of conscience is not limited to reasonable moral beliefs, he writes, then a person who objects to military service because he believes that wearing green in battle is morally evil has a right to accommodation.¹⁷ I find this rebuttal unconvincing for several reasons. It is hard to imagine a person sincerely holding this belief, and even harder to imagine circumstances in which we could have good evidence that the objector was sincere and not simply seeking to avoid military service for self-interested reasons. Moreover, some would argue that the belief in God (or in some specific conception of God), or the belief that God's will can be known through specific texts, and so on, are just as absurd as the belief that wearing green in battle is morally evil. If the former are thought to provide an acceptable basis for a conditional right of conscience, a position

Card does not challenge, then why not the latter?¹⁸ Besides, as should be clear by now, acknowledging a defeasible right of conscience on the part of a person who objects to wearing green in battle does not entail that, all things considered, this person should be accommodated. All that follows is that the state must not dismiss the objector's claim out of hand, but instead offer a justification for its refusal to accommodate him (if, in fact, it does not do so) that identifies the competing moral considerations the state believes defeat or outweigh the objector's right of conscience. Why think it absurd to require such a rationale?

The second reason Card offers for rejecting a right of conscience that encompasses fidelity to any moral belief, no matter how unreasonable, is that "on this understanding a provider can acceptably refuse EC [emergency contraception] based on (e.g.) sexist beliefs that women are inferior and should be pregnant as often as men want them to be."¹⁹ Card claims that this is a "troubling implication," though he does not explain why this is so. Admittedly, it would be a troubling implication if the right of conscience were absolute, but I do not claim that it is. Besides, it is not clear how a requirement that a conscientious objector be able to demonstrate the reasonableness of his belief addresses the challenge of weighing his claim to accommodation against others' competing moral claims, including a woman's (liberty-) right to become pregnant only if she chooses to do so. Neither the plausibility of an objector's belief nor the quality of his moral reasoning make any difference to the cost he will bear if the state refuses to accommodate him, or the costs others will bear if it does exempt him from particular legal and professional requirements (costs which may determine the conditions under which a physician's desire to be exempt from the law ought to be accommodated). Finally, we must be careful not to confuse the state's accommodation of a conscientious objector with an endorsement of the principle he seeks to uphold. Indeed, legal recognition of a sexist physician's right of conscience (under certain conditions) is perfectly consistent with criticism by the state of the principle the physician believes ought to guide his conduct.

Card's third reason for rejecting an unrestricted right of conscience is that such a conception is at odds with the one currently employed by the military. Conscientious objectors to military service must defend themselves before a review board which awards an exemption from military service only for certain reasons (or, in many countries, only one reason, namely, opposition to killing (humans) in any circumstance). Were Card to raise the example of conscientious objection to military service solely for the purpose of challenging the claim that pharmacists enjoy an absolute right to conscientiously refuse to fill prescriptions for emergency contraception, as LaFollete and LaFollete sometimes seem to do, then it would carry some argumentative weight. Given that the right to conscientiously refuse to perform military service is a conditional one, it would be surprising were the same not true of a right to conscientiously refuse to fill prescriptions for emergency contraception. But current practices vis-à-vis conscientious objection to military service do not support Card's claim that the right of conscience is limited to reasonable moral beliefs and valid arguments. When a military review board investigates a putative conscientious objector's claim to accommodation, it focuses almost exclusively on evidence for the sincerity of the objector's opposition to killing in all circumstances. It makes no effort to assess the reasonableness of the world view that has led the objector to view all killing as immoral, nor to the quality of the objector's reasoning (or that of the community to which he belongs and from which he has acquired his belief). Moreover, the fact that states currently place certain restrictions on the sorts of beliefs fidelity to which they will accommodate does

not justify those restrictions. That is not to say that the current policy regarding conscientious objectors to military service is unjustified. Rather, it is only to point out that, in the absence of a clearly articulated rationale for the current policy, we cannot infer from it that the state ought to acknowledge a defeasible claim to accommodation only for those objectors with beliefs it judges to be reasonable.

The arguments to this point, I believe, strongly support the position that there are no restrictions on the kind of commitments a person may assert a conditional right to uphold in the face of legal and professional obligations to do otherwise. Still, might the fact that a physician voluntarily enters the profession, and so freely and knowingly takes on the obligations attached to her professional role, entail that the state has no duty at all to accommodate her conscientious refusal to provide legally and professionally sanctioned services? LaFollete and LaFollete think so; they write that the case for even a conditional right of conscience is “far from overwhelmingly convincing, in large part, because they [medical professionals] entered the profession voluntarily, and because what they are being asked to do is a core part of their respective professions.”²⁰ Brock, too, argues that in many cases a person’s freely choosing to take on a certain professional role, one she knew, or ought to have known, would require her to perform certain tasks, entails that she must either do so or exit that role (and, possibly, the entire profession).²¹ Were the argument from consent successful, it would render all of the previous discussion moot. The argument fails, or at least it is incomplete, and an explanation of its shortcomings reveals the importance of resolving the dispute over restrictions on the scope of a professional’s right of conscience that has been the focus of this essay.

The appeal to a professional’s voluntary entry into the profession to rebut her assertion of a right of conscience either evidences a failure to grasp the fundamental nature of the conscientious objector’s claim against the state, or begs the question against her. In declaring a right to conscientiously refuse to provide a particular service, a professional contends that neither the profession nor the state are morally (or, perhaps, legally) entitled to make provision of that service, in all circumstances, a condition for being licensed to practice. It is no response to this contention to simply assert that the objector voluntarily entered the profession. Rather, what the state (and the profession) must offer is a justification for making the right to practice conditional on a willingness to provide the service in question, with no accommodation for conscientious objectors other than in those cases that the state and the profession already recognize. Surely it will be able to do so in some cases. In others, however, it may not; that is, it may have no justification for refusing to accommodate those who conscientiously object to performing the service in question, at least under certain conditions. If, nevertheless, the state makes no attempt to accommodate these conscientious objectors, then it makes the freedom to practice dependent on conditions it lacks a moral right to impose. That claim—that neither the state nor the profession may make the liberty to practice conditional on consent to provide particular services in the circumstances in question—is the heart of an objector’s claim when she asserts a right of conscience. Where the protest is to the terms to which a person must agree in order to enjoy a particular privilege, the claim that the person did agree to the terms fails to grapple with the objection.

Disputes over the specific terms the state may justly impose on those who wish to practice medicine highlight the need for a compelling account of legitimate state authority, one that can provide the background against which the argument from consent may be more compelling. In particular, some

justification must be offered for why the conscientiously objecting physician or pharmacist has a moral duty to defer to the state’s judgment that the present terms to which medical professionals must agree in order to enjoy a license to practice do not violate her right of conscience. Possibly that justification also rests on the physician’s consent, in this case to the state’s rule, though as I argue elsewhere there are good reasons to doubt that modern states’ moral authority rests on the consent of the governed.²² The point I wish to emphasize here, however, is only that the argument from consent does not suffice by itself to establish that physicians lack a conditional moral right to conscientiously refuse to provide specific legal and professional services.²³

Endnotes

1. Though obviously crucial for a complete account of a medical professional’s right of conscience, the question of exactly what type of legal accommodation a just state ought to offer professionals who object to providing particular services is not one I explore in any detail here.
2. Such a right may also be justified on instrumental grounds, say because legal accommodation of medical professionals that conscientiously object to fulfilling certain legal obligations strengthens the state’s and the profession’s *de facto* legitimacy, which leads in turn to greater overall compliance with the law and the profession’s code of conduct than would occur were the state to refuse to accommodate them. Though I think there are good instrumental reasons for accommodating conscientious objectors in certain circumstances, they do not exhaust the reasons for doing so had by a just state, or the private actors to which it delegates some of its authority.
3. In a paper entitled “Petitions for Conscientious Objector Status: Right, Excuse, or Plea for Mercy?” (unpublished manuscript on file with author), I examine in detail the case for grounding a right of conscience in the importance of protecting an agent’s integrity, as well as in respect for a person’s status as an autonomous agent. Here I largely assume that a person’s interest in preserving his or her integrity suffices to ground a right of conscience—which, again, is a view that many philosophical defenders of a right of conscience explicitly adopt—and consider whether the state’s reason to protect a person’s integrity depends on the content of the particular belief to which that person wishes to remain true.
4. Might a person’s integrity merit preservation only insofar as the standards to which she wishes to display fidelity are true, or at least reasonable? To give an affirmative answer to this question seems to me to be too dismissive of the suffering that even someone with reprehensible beliefs will experience should she be compelled to betray them, or else suffer the myriad negative consequences associated with breaking the law. Admittedly, however, the question of how much *weight* a just state should give to such a person’s suffering deserves more systematic treatment than I can offer here.
5. Dan Brock, “Conscientious Refusal by Physicians and Pharmacists: Who Is Obligated to do What, and Why?” *Theoretical Medicine and Bioethics* 29 (2008): 189.
6. *Ibid.*, 190.
7. Note that the issue here concerns a tradeoff between two rights—the right to integrity and the right to medical treatment (conditional, perhaps, on the ability to pay for it). In Dworkinian terms, it is a conflict within the domain of principled arguments, not between principle and policy.
8. Jacob M. Appel, “May Doctors Refuse Infertility Treatments to Gay Patients?” *Hastings Center Report* 36, no. 4 (2006): 20.
9. Mark R. Wicclair, “Conscientious Objection in Medicine,” *Bioethics* 14, no. 3 (2000): 214.
10. *Ibid.*, 216. See also Mark R. Wicclair, “Reasons and Healthcare Professionals’ Claims of Conscience,” *American Journal of Bioethics* 7:6 (2007): 21.

11. Eva LaFollete and Hugh LaFollete, "Private Conscience, Public Acts," *Journal of Medical Ethics* 33 (2007): 249.
 12. *Ibid.*, 252.
 13. *Ibid.*
 14. Of course, a person who petitions the state for accommodation of her conscience may also contest the justice of the law from which she seeks an exemption, either by legal or illegal means (e.g., civil disobedience), or both. Still, conceptually, and sometimes in practice, we can distinguish between an agent's seeking an exemption from a legal requirement and contesting its justice for the purpose of reform or repudiation. For discussion, see Lefkowitz, "Petitions for Conscientious Objector Status: Right, Excuse, or Plea for Mercy?" unpublished manuscript on file with author.
 15. *Ibid.*, 250.
 16. Robert F. Card, "Conscientious objection and emergency contraception," *American Journal of Bioethics* 7, no. 6 (2007): 11.
 17. *Ibid.*, 13.
 18. As one discussant said, there are all sorts of beliefs that would strike us as crazy if held by only one person but that are not so viewed because they are held by a group of people.
 19. *Ibid.*, 13.
 20. LaFollete and LaFollete, "Private Conscience," 254.
 21. Brock, "Conscientious Refusal," 191.
 22. David Lefkowitz, "The Duty To Obey the Law," *Philosophy Compass* 1 (2006): 1-28.
 23. I wish to thank the Hoffberger Center at the University of Baltimore, and especially Fred Guy, for the invitation to present this paper at the conference on Philosophy and Law. I benefited greatly from the comments of Josh Kassner, Tony Reeves, Stefan Sciarraffa, and the editors of the *APA Newsletter on Philosophy and Law*.
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