

1. CONSCIENTIOUS OBJECTION IN HEALTHCARE

When we talk of conscientious objection in healthcare, we typically think of doctors refusing to perform or participate in abortion and perhaps a few other medical interventions. In fact, abortion, filling prescriptions for contraceptives and providing medical assistance to die are the commonest cases of conscientious objection by health care professionals (henceforth “HCPs”)¹. And it seems that “few would deny that permitting conscientious objection is appropriate in relation to practices that are as morally controversial and contentious as abortion and physician assisted suicide”². However, the scope of conscientious objection – understood as the appeal to one’s own conscience to claim exemptions from performing some professional activity – is much broader. One’s conscience might oppose many other activities. For instance, some Muslim medical students would like to object to medically inspecting patients of the opposite sex or patients intoxicated with alcohol or drugs³. They offer religious reasons for their objection in the same way as many doctors offer religious reasons for their objection to abortion.

It might well be that, as Wicclair says, very few would deny that it is appropriate to grant conscientious objection in the case of abortion; but it certainly is more difficult and more counterintuitive to consider other cases of conscientious objection acceptable. Let me give you an obvious example. Think of a doctor who has a conscientious objection to administering

¹ M. S. Swarz. Conscience Clauses or Unconscionable Clauses: Personal Beliefs versus Professional Responsibilities. *Yale J Health Policy Law Ethics* 2006; 2: 269–350, p. 272

² M. Wicclair. Conscientious Objection in Medicine. *Bioethics* 2000; 14: 205–27, p. 207

³ S. Strickland. Conscientious Objection in Medical Students: A Questionnaire Survey. *J Med Ethics* 2012; 38: 22–25.

Objection to conscience

antibiotics because she conscientiously believes that bacteria have significant moral status, and actually a moral status comparable to that of a foetus. I take it that most, perhaps all of us would say that this kind of objection should not be granted. More difficult, however, is to provide the reason why it should not, if what we are looking for is a reason that would not also apply to the case of conscientious objection to abortion. Thus, one is faced with the challenge of either denying that accommodating conscientious objection is appropriate or, if one wants to stick to the idea that conscientious objection to abortion should be accommodated, provide a moral criterion that allows to distinguish between the case of conscientious objection to abortion and a case like conscientious objection to antibiotics. In this paper, I am going to argue that such moral criterion does not exist, and therefore that conscientious objection to abortion should not be accommodated.

Of course, it is very unlikely that a doctor would object to antibiotics on grounds of moral status. However, this unrealistic example of conscientious objection, precisely because it is so flamboyantly unacceptable, provides a good test case for answering the following question: is there a principled reason to respect conscience and conscientious objection in healthcare? The example is a test case in the following sense: if the principle we use to justify the acceptability of conscientious objection to abortion would also imply, *other things being equal*, the acceptability of conscientious objection to antibiotics on the basis of considerations about moral status, then I take this to be a *reductio ad absurdum*. We would have to conclude that the

Objection to conscience

principle we have used to justify the acceptability of conscientious objection to abortion cannot do the justificatory work we want it to do.

There are three theses in this article. First, a *provisional* conclusion I draw is that there is no principled reason to grant conscientious objection in healthcare *qua conscientious*, i.e. there is no principled reason whereby the value of conscience can by itself justify doctors' objections. I will argue for this thesis by drawing attention to the fact that conscience is typically understood as a formal, rather than a substantive notion, and by showing that the appeal to the formal notion of conscience yields the same moral conclusions in the case of conscientious objection to abortion and in the case of conscientious objection to antibiotics. The conclusion that there is no principled reason to grant conscientious objection *qua conscientious* is "provisional" in the sense that it shifts the burden of proof on to defenders of conscientious objection, who have to demonstrate that a principled defence of conscientious objection, such as for example one based on the value of doctors' moral integrity, applies to the case of conscientious objection to abortion but not to the case of conscientious objection to antibiotics. For example, they might argue that in the latter case, but not in the former, the value of moral integrity is outweighed by some constraining factor. Whether this is the case is a question that I am happy to leave open, but I will argue that the two most plausible constraining factors do not allow us to draw a distinction between conscientious objection to abortion and conscientious objection to antibiotics.

The second thesis of the article is that, whether and when HCPs should be allowed to object only depends on whether the practices they object to are

Objection to conscience

good or bad, and therefore on the criterion for goodness or badness we adopt.

Finally, the third thesis is that sometimes there are good reasons to allow doctors to object to certain procedures that they would otherwise be socially or legally expected to perform. To claim that there is no principled reason to respect HCPs' conscience is not the same as to claim that there is no reason to sometimes respect their objection.

Before proceeding, a terminological note is in order. By "principled reason" to respect conscientious objection *qua conscientious* I mean *moral* reason to respect conscience.. Typically, supporters of conscientious objection appeal to reasons such as, for example, respect for *moral integrity* or for the *dignity* of the HCPs. These are concepts that are derived from the special value attributed to conscience, regardless of its content. "Moral integrity" and "dignity" are moral reasons. As such, they must be consistently applied, and therefore must entail the same final judgment across various cases, when 1) cases are relevantly similar, and 2) other things are equal. In the case of *conscientious* objection which is defended *qua conscientious*, 1) what makes different cases relevantly similar is the fact that a certain medical practice violates a HCP's conscience and, on this basis, the HCP's refuses to perform the procedure in question; and 2) things are equal when factors invoked to constrain the application of the principle in one case are equally present (or absent) in the other case(s). Such factors might include, for instance, risks for the health or the life of the patient and the rights of

Objection to conscience

patients to receive the legal medical treatments they need⁴. If, in spite of 1) and 2) obtaining, the reason we are using to defend the right to conscientious objection in one case does not yield the same conclusion in the other case(s), then that is not a moral or a principled reason.

2. CONSCIENCE, MORAL INTEGRITY AND CONSCIENTIOUS OBJECTION

Conscience is the domain of our private morality⁵ and of our commitment to morality⁶. The commitment is to be understood in terms of motivation to act morally⁷, sense of duty⁸, self-evaluative feelings⁹, or a combination of these aspects. There is no conceptual or moral relationship between the notion of conscience or the value attached to conscience on one side, and the content of conscience on the other¹⁰. For instance, abortion does not violate the conscience of a doctor who does not have moral objections to abortion.

⁴ R. Card. Reasonability and Conscientious Objection in Medicine: reply to Marsh and an Elaboration of the Reason-Giving Requirement. *Bioethics* 2014; 28: 320-326, p. 324

⁵ M. Wicclair. 2011. *Conscientious Objection in Health Care*, Cambridge: Cambridge University Press:4. A. Giubilini, Conscience. In *The Stanford Encyclopedia of Philosophy* (Spring 2016 Edition), Edward N. Zalta, ed., URL = <<http://plato.stanford.edu/archives/spr2016/entries/conscience/>>.

⁶ J. Blustein, Doing What the Patient Orders: Maintaining Integrity in the Doctor-Patient Relationship, *Bioethics* 1993; 7: 289–314. D. Sulmasy. What Is Conscience and Why Is Respect For It So Important. *Theor Med Bioeth* 2008; 29: 135-149

⁷ J. Childress, Appeals to Conscience, *Ethics* 1979; 89: 315-355

⁸ J.S. Mill. 1861 (2005), *Utilitarianism*, ebooks@ Adelaide, Public Domain book. Available at https://ebooks.adelaide.edu.au/m/mill/john_stuart/m645u/complete.html. I. Kant. 1785 (2005), *Groundwork for the Metaphysics of Morals*, Jonathan Bennett, ed. Available at <http://www.earlymoderntexts.com/assets/pdfs/kant1785.pdf>, and discussion in A. Wood 2008. *Kantian Ethics*. New York, NJ: Cambridge University Press, chapter 3.

⁹ C. D. Broad. Conscience and conscientious action, *Philosophy* 1940;15: 115-130. P. Fuss. Conscience. *Ethics* 1964; 74: 111-120

¹⁰ Broad, *op. cit.*, note 9.

Objection to conscience

Actually, her conscience might be violated if she is not allowed to perform an abortion that she thinks would be beneficial to her patient.

Conscience is, to use a metaphor, like an empty box that can be filled with various substantial moral views, none of which defines the nature of conscience. As is commonly recognized in philosophical discussion of conscience, its character is *formal*, not material¹¹ or substantive. As put it by Strohm, “conscience has what might be called an ‘identity problem’ – that it possess no fixed or inherited content of its own, and that it can be hailed and mobilized in defence of one position or equally in defence of its rival”¹².

Because of the formal character of conscience, a plausible defence of conscientious objection cannot be based on considerations about the content of conscience, e.g. on the idea that abortion *might* be wrong and therefore conscientious objectors *might* be holding a sound moral view. It is true that appeals to “epistemic moral humility” have often been used to support freedom of conscience in the past¹³, and are sometimes put forward today by conscientious objection advocates¹⁴. But what is typically emphasized in these appeals is the value of humility itself, as a virtue to be cultivated and as a basis for the principle of toleration¹⁵. However, as many supporters of conscientious objection are aware, humility and toleration are not strong enough bases for a principled defence of conscientious objection *qua conscientious*. As put it by Wicclair, for instance, “toleration of moral

¹¹ Childress, *op. cit.*, note 7

¹² P. Strohm. 2011, *Conscience: A Very Short Introduction*. Oxford: Oxford University Press: 120.

¹³ P. Bayle 1686-1688 (2005), *Philosophical Commentary on These Words of Jesus Christ “Compel Them to Come In, That My House May Be Full”*. John Kilcullen and Chandra Kukhatas, eds. Indianapolis: Liberty Fund.

¹⁴ Sulmasy, *op. cit.*, note 6, p. 144.

¹⁵ *Ibid.*

Objection to conscience

diversity would imply that physicians never are morally obligated to follow ethical standards that they reject”¹⁶. Epistemic humility and toleration cannot warrant a right to conscientious objection *qua conscientious*. And indeed, appeals to conscience are typically accompanied by the idea that no further reason, apart from the value of conscience itself, is necessary to defend one’s conduct¹⁷.

Consistently with the formal (as opposed to substantive) character of conscience, the principles typically invoked to defend conscientious objection in healthcare, and freedom of conscience more in general, are related to the value attached to conscience, regardless of its content. To defend conscientious objection to abortion is to defend whatever value we attach to conscience, not to condemn or express any view – or any doubt – on the morality of abortion. As put it by Murphy and Genuis (2014), “to force people to do *something* they believe to be wrong is *always* an assault on their personal dignity and essential humanity”¹⁸.

Independence from substantial moral views regarding the content of conscience also characterizes the defence of a right to conscientious objection by some Catholic bioethicists. This is noteworthy, because in the Catholic doctrine the notion of conscience is not merely formal; rather, it implies an intimate connection with the notion of truth. For a Catholic, a “free” conscience is a conscience free from error and free to contemplate the

¹⁶ Wicclair, *op. cit.*, note 2, p. 211.

¹⁷ M. C. McGuire. On Conscience. *J Philos* 1963; 60: 253–263, p. 259. Childress, *op. cit.*, note 7, p. 329.

¹⁸ S. Murphy & S. Genuis. Freedom of Conscience in Health Care: Distinctions and Limits. *J Bioeth Inq* 2013; 10: 347–54, emphasis added.

Objection to conscience

truth of God's law in human hearts¹⁹. However, having to defend conscientious objection from a secular perspective, i.e. without imposing Catholic principles in public life, Catholics often defend freedom of conscience for Catholics HCPs by appealing to a formal view of conscience. Thus, for example, Catholic bioethicist Edmund Pellegrino argued for a right to conscientious objection in healthcare by including *any* religious view within this right, and therefore regardless of the connection of conscience with the "truth" of the Catholic doctrine: the principle protecting Catholic HCPs' conscience would have to be the same principle protecting the conscience of Muslims, Jewish, or of any other religious HCP²⁰

More generally, defences of conscientious objection in healthcare are typically based on the idea that the value of conscience is independent from its content. According to Dan Brock, for a healthcare practitioner

"maintaining her moral integrity (...) requires that she not violate her moral commitments and gives others reason to respect her doing so, *not because these 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"²¹

¹⁹ J. Ratzinger. Conscience and Truth. *Communio*, 1991; 37 529-538. John Paul II. 1993. *Veritatis Splendor*. Vatican City: Libreria Editrice Vaticana. John Paul II. 1995. *Evangelium Vitae*. Vatican City: Libreria Editrice Vaticana,. Paul VI 1965, *Gaudium et Spes*, Vatican City: Libreria Editrice Vaticana.

²⁰ E. Pellegrino. The Physician's Conscience, Conscience Clauses, and Religious Beliefs: a Catholic Perspective. *Fordham Urban Law J* 2002; 30: 221-244

²¹ Brock, Dan. Conscientious Refusals by Physicians and Pharmacists: Who is Obligated to do What, and Why? *Theor Med Bioeth* 2008; 29: 187-200, p. 189, emphasis added.

Objection to conscience

And in fact, moral integrity is the value most frequently appealed to by conscientious objection advocates²². Moral integrity is considered valuable and worth protecting because of its conceptual and psychological relation not only with our conscience, but with our sense of personal identity, i.e. our idea and our sense of what type of person we are²³. According to Pellegrino, for instance

“[t]o arrive at a conclusion that something must be done or avoided, and to act accordingly, is to exhibit the kind of person one is, and wants to be. That act provides evidence that the individual is the kind of person she says she is”²⁴.

All the values and principles invoked to defend conscientious objection (*qua conscientious*) that I have presented here refer to conscience as a formal notion, i.e. they hold regardless of the content of the conscientious beliefs. However, as I am going to argue, such defences of conscientious objection cannot do the justificatory work they are supposed to do.

3. MORAL INTEGRITY AND CONSISTENCY

The value of conscience resides in its formal character, not in its content. However, we would not think that the same principles and values invoked to defend the right to conscientious objection to abortion can also be applied to defend conscientious objection *tout court*. Consider again the case of the

²² Wicclair, *op. cit.*, note 2. Wicclair, *op. cit.*, note 5. Sulmasy, *op. cit.*, note 6. Brock, *op. cit.*, note 21. Pellegrino, *op. cit.*, note 20.

²³ B. Williams. 1973. Integrity, in J.J.C. Smart and B. Williams. 1973. *Utilitarianism: For and Against*. New York: Cambridge University Press, 108–117; Wicclair, *op. cit.*, note 5, pp. 25-26; Blustein, *op. cit.*, note 6, p. 295; Childress, *op. cit.*, note 7.

²⁴ Pellegrino, *op. cit.*, note 20, p. 228.

Objection to conscience

doctor who refuses to give antibiotics to her patients because, on the basis of her very peculiar religious beliefs, she thinks that bacteria have a high moral status and that it is wrong to take action that would cause or facilitate their death. Hardly would anyone say that there are good reasons for accommodating this conscientious objection. The interesting question is why we think so, and why those who are in favour of a right to conscientious objection to abortion would make a distinction between the two cases.

Because of the formal character of conscience, those who are in favour of conscientious objection *qua conscientious* would need to argue that in both cases is there a reason to respect conscience and moral integrity and therefore to grant conscientious objection, but that other considerations, or constraining factors, that conflict with the value of conscience and moral integrity outweigh such reason *only* in the case of antibiotics. In other words, they would need to show that the things that are not equal in the two types of cases are the kind of things that typically put constraints on the principle of freedom of conscience in healthcare.

Factors typically held to represent legitimate constraints to freedom of conscience in healthcare are 1) the rights of patients to receive the legal and beneficial medical treatment they request or that is in their best interest, and 2) the consistency of the conscientious objection with core professional values and principles²⁵. As I am going to argue, there is no reason to think

²⁵ Granted, it might be that such factors only express necessary, but not sufficient conditions of justified conscientious objection to abortion; but the burden of proof is on those who claim that other conditions exist to provide them and show that they entail different conclusions regarding the permissibility of conscientious objection to abortion and of conscientious objection to providing antibiotics.

Objection to conscience

that these two necessary (and perhaps sufficient) conditions of permissible conscientious objection cannot equally apply in the two cases of objection to abortion and objection to antibiotics. Therefore, there is no reason to think that a principle that would justify conscientious objection to abortion could not also justify conscientious objection to antibiotics. Let us see more in details.

3.1 Other things are equal (I): The no-harm constrain equally applies

According to the “conventional compromise”²⁶ frequently endorsed in the literature and in most legislations, HCPs’ right to object is constrained by the right of the patient to receive the treatment (whereby the right to object to abortion does not extend to the right to object to informing or referring a woman to a doctor willing to perform the abortion), or the need of the patient to receive the treatment quickly in order to avoid very serious consequences (whereby a doctor must perform an abortion in emergency situations whether or not she is a conscientious objector). This type of constraint is not different from the more general constraint we normally pose on individual liberty, i.e. one based on the no-harm principle: failing to help patients obtain the needed medical services might harm them.

Defenders of conscientious objection *qua conscientious* need to say the no-harm principle constrains the right to object to antibiotics but not the right to object to abortion. This would be true only if objection to antibiotics constituted a greater risk of harm, or a risk of greater harm, than objection to

²⁶ Brock, *op. cit.*, note 21.

Objection to conscience

abortion did either for individual patients or for public health. Neither of the two risks are greater in the case of objection to antibiotics, though.

For example, we could say of the case of objection to antibiotics the same thing usually said about the case of objection to abortion: doctors objecting to antibiotics would not pose any threat either to the patient or to public health, because there would probably be other doctors available to provide the service and to whom, as in the case of abortion, the objecting doctors could be required to refer the patient. But still, we would not think that a doctor should be allowed to object to antibiotics on the basis of beliefs about the moral status of bacteria as long as there is no significant harm or risk of significant harm for the patient, or as long as the doctor refers the patient to a colleague and there are no significant immediate risks for the health of the patient (or of other people that might be infected).

Besides, the risk of harm might be greater in the case of conscientious objection to abortion than in the case of conscientious objection to antibiotics. For example, where there is a large proportion of conscientious objectors to abortion, women might not be able to access safe and legal abortions even with a referral system in place²⁷.

Thus, the obligation to always refer the patient and to perform the procedure in emergency situations might work equally well or equally badly in the case of conscientious objection to abortion and in the case of conscientious objection to antibiotics. We cannot appeal to this criterion to distinguish

²⁷ F. Minerva. Conscientious Objection in Italy. *J Med Ethics* 2015; 41: 170-173

between the two cases of conscientious objection in terms of the permissibility of the objection.

3.2 Other things are equal (II): consistency with professional values equally applies

The second candidate for the role of outweighing consideration is the consistency of the objection with the core values and principles of medicine²⁸. We have reasons to respect doctors' conscience and moral integrity as long as conscientious objection is consistent with at least some professional standards and principles. So, according to this view, conscientious objection to abortion is acceptable because saving human lives (of fetuses in this case) is part of doctors' professional ethics; and objection to providing antibiotics is unacceptable because treating or preventing diseases is an essential part of medicine.

However, if we take a closer look, also consistency with professional values does not seem to provide a valid criterion for distinguishing between the objection to abortion and the objection to antibiotics. This is because, as I am going to argue, objection to abortion is not consistent with the values and principles of contemporary, Western medicine. Also in this respect, then, conscientious objection to abortion is not different from conscientious objection to antibiotics. Let's see more in details.

Doctors who refuse to provide an abortion to a woman who requests it are typically refusing to provide a medical service that is safe, beneficial, and

²⁸ Wicclair, *op. cit.*, note 2. Wicclair, *op. cit.*, note 5.

Objection to conscience

autonomously requested by the woman; therefore, they are acting against the ethical standards of beneficence and respect for patient autonomy which are commonly accepted in contemporary, Western medical ethics and medical deontological codes. In this sense, the objection to abortion is inconsistent with the values and principles of contemporary, Western medicine, unless other values of contemporary medicine can be brought in support of opposition to abortion. One might argue that one value of medicine that could justify opposition to abortion is the special value attributed to human life, which would yield an ethical principle that prescribes to preserve human life whenever possible. However, the view that saving all human lives, including those of foetuses, is one of the core principles of contemporary medicine is simply false, and cannot therefore be used as a counterargument against the view that objection to abortion is inconsistent with the values of contemporary medicine. In fact, abortion is a procedure that is permitted by many medical associations and that can be performed, as the American Medical Association prescribes, “in accordance with good medical practice”²⁹; it is also commonly taught in medical schools in many countries. How could the institution of medicine condone something like abortion if the prescription to try to save all forms of human life was a core principle of the profession? An absolute prohibition to kill a fetus is not consistent with principles of contemporary medicine and is not itself a principle of contemporary medicine; it is only a principle of certain

²⁹ The American Medical Association, The American Medical Association *Code of Medical Ethics*’ Opinions on Physician Participation in Abortion, Assisted Reproduction, and Physician-Assisted Suicide. *AMA Journal of Ethics* 2013; 15: 206-7

Objection to conscience

moralties which are not representative of contemporary medicine – regardless of whether these moralities are true or false.

In fact, even advocates of conscientious objection and defenders of a conservative approach to healthcare have to admit that among physicians “[t]oday, consensus on the precepts of the Hippocratic ethic has been seriously eroded”³⁰ (Pellegrino 2002, p. 229), and with it the precept of always attempting to save human life.

Thus, as far as consistency with professional values is concerned, opposition to abortion is no different from opposition to antibiotics on grounds of moral status.

Actually, if there is an uncontroversial and indisputable principle of medicine, this is the commitment to preserving patients’ health. And both antibiotics and abortion can serve this purpose. Consider the following description of a patient’s condition. Suppose there is a woman who has a parasitic organism in her body – call this organism x . The organism is causing her a lot of distress and is affecting and probably will affect her mental and physical health and her plans in the short and/or in the long term. The woman needs and wants to get rid of x so as to restore her good health. This description fits both the case of a woman asking for abortion and that of a woman with some bacterial infection. In one case x is a foetus, in the other it is a bacterium. In both cases, she is legally entitled to receive medical assistance to eradicate x – at least if we consider legislations where abortion is permitted. In one case, many would allow the doctor to object to the procedure; in the other case, many would not. But in both cases we are

³⁰ Pellegrino, *op. cit.*, note 20, p. 229.

Objection to conscience

at the presence of debilitating organisms that negatively affect the physical and the psychological health of the woman. In both cases, the doctor who kills and helps killing x acts according to the principles of beneficence and of respect for patient's autonomy, in view of promoting patients' health. Professional principles therefore require doctors to perform the abortion in the same way as they require them to give antibiotics. And if we think they don't require of doctors to do the former, then they don't require of doctors to do the latter either. Thus, if we want to consider the professional values and principles as a type of constraint for freedom of conscience, then they would equally constrain, or equally fail to constrain, doctors' freedom of conscience in the two cases.

4. MEETING SOME OBJECTIONS

There is a seemingly obvious objection to the story I have just told. Some people would reply that of course a foetus is not the same as a bacterium, morally speaking. Because of their different moral status or moral value, the foetus, but not the bacterium, counts as a patient, rather than as *merely* a parasite. However, this type of argument cannot be used to constrain conscientious objection or to make morally relevant distinctions between different cases of conscientious objection. Whether or not a foetus counts as a patient depends on its moral status or moral value. But remember that, because of the formal character of conscience, substantial moral views about the content of conscience – such as views about moral status or moral value of fetuses - do not serve the purpose of legitimizing or constraining a right to conscientious objection *qua conscientious*. We have seen that the only

Objection to conscience

type of considerations that can be used to limit the right to conscientious objection *qua conscientious*, once the practice the doctor objects to has been recognized as legitimate and beneficial to the patient, are considerations about the harm to other people and about consistency with professional principles. But considerations about the moral status or the value of the life of a foetus do not fall within the realm of professional values and principles.

I am not denying that fetuses have higher moral status than bacteria. This type of claim is beyond the scope of this paper. My point here is that without appealing to substantial moral views, such as views about moral status, the principle of freedom of conscience applies equally to the two cases of objection to abortion and objection to antibiotics. But if we want to appeal to substantial moral views to determine the legitimacy of certain objections and to distinguish between permissible and impermissible conscientious objections, then we should start talking about what is morally good and morally bad in a substantial sense, rather than about the value of conscience or of moral integrity.

One might reply here that, while it may be true that considerations about the moral status of fetuses do not belong to the realm of medicine's values, considerations about the moral status of bacteria do, because the idea that bacteria have moral status is not consistent with the mission and the principles of medicine. However, if we accept that attribution of moral status to bacteria is ruled out by the principles of medicine, then in the same sense we need to accept that also the view that fetuses have a significant moral status which makes killing fetuses impermissible is actually not consistent with the mission Western medicine, because, as seen above,

Objection to conscience

abortion is typically endorsed by medical associations, which consider it consistent with good medical practice. So, once again, the two types of objection would stand or fall together.

Someone might also point out that we have been using a misleading and unrealistic comparison: no doctor would ever object to antibiotics on grounds of moral status of bacteria. But thought experiments and imaginary cases in ethics serve the purpose of highlighting what it exactly is at stake in a certain case, which values and principles do justificatory work and which ones don't. Besides, we should not think that conscientious objection in healthcare is limited to what we consider to be the most controversial cases. This is exactly why the search for a principled reason is important, and why the analogy with the fictitious case of conscientious objection to antibiotics is relevant. As our society becomes more multicultural, and as more controversial medical options become available, we might soon have to deal with cases of conscientious objection which seem at first glance, or intuitively, unacceptable to most of us, or which cannot be regulated by simply appealing to what intuitively seems reasonable to disagree about. And we would need to explain why we would want to implement policies allowing certain cases of conscientious objection but not others.

Here are examples of conscientious objections that medical students in the UK think they should be allowed to put forward³¹:

SEE TABLE `1

Some of these objections, such as the refusal to inspect patients of the

³¹ Strickland, *op. cit.*, note 3.

Objection to conscience

opposite sex, would probably sound rather odd to many of us. Actually, they might sound as odd as the refusal to give antibiotics on the basis of the belief that bacteria have moral status. For what we know, there might be someone holding a religious belief of that sort, exactly as many people hold religious beliefs about spiritual souls in foetuses or after life punishment for having seen a naked person or for having received a blood transfusion. So we need to know whether and why these doctors – and also those doctors who are morally opposed to abortion – should have a right to object to these procedures.

Someone might also point out that an objection to abortion is more reasonable than an objection to antibiotics, or that reasonable people can disagree about the morality of abortion but not about the morality of killing bacteria. According to the “reasonability view”, doctors should provide reasons for conscientious objection and allow for these reasons to be assessed and be subject to the constraint that they should be “reasonable”³². However, although the concept is widely used in philosophical literature, it is difficult to define what exactly should count as “reasonable”³³. For instance, it is hard to find a definition of “reasonable” whereby a religious view such as the Catholic one according to which there is a spiritual soul in a foetus - upon which many Catholic doctors advance and are granted conscientious objection to abortion - is more or less reasonable than a religious view about the moral status of bacteria. Also using coherence with

³² R. Card. Conscientious Objection and Emergency Contraception. *American Journal of Bioethics* 2007; 7 (6): 8–14. Card, *op. cit.*, note 4.

³³ J. Marsh. Conscientious Refusals and Reason-Giving. *Bioethics* 2014; 28: 313-319

Objection to conscience

empirical data³⁴ as criterion for reasonableness would yield the same response, since we have no evidence at all in support of claims about souls in foetuses. Unless we can explain what makes certain religious views based on unproven metaphysical assumptions more reasonable, i.e. more coherent with empirical data, than other religious or metaphysical views to which we are simply less accustomed, we don't have a principle we can use to discriminate between different cases of conscientious objection.

5. ON THE STANDARD FOR GOODNESS AND BADNESS IN MEDICINE

So far I have shown that, unless we bite the bullet and admit that all types of conscientious objection should be treated equally, there is no principled reason to defend conscientious objection *qua conscientious*, i.e. to defend conscientious objection by appeal to the value of the formal notion of conscience. This does not mean however that objections cannot be morally justified or that objections should never be granted. It means, however, that the justification has nothing to do with conscience, with the value of conscience and with the principles related to the value of conscience. Rather, the criterion for the acceptability of objections – once considerations about the value of conscience are dropped - lies in the validity of the reasons that explain why doctors object. What are the criteria for such validity? As far as healthcare is concerned, the standard cannot but be provided by the values and principles of the medical profession, such as beneficence, non-

³⁴ Card, *op. cit.*, note 4, p. 321.

Objection to conscience

maleficence, autonomy, and justice³⁵, and the standards of professionalism required of healthcare providers, and particularly their duty of care towards patients.

Thus, that there is no principled reason to respect conscientious objection *qua conscientious* does not mean that there is no reason to respect objections. Sometimes objections are acceptable and sometimes good doctors should object. This is the case when they are asked to perform activities which conflict with the values and principles of medicine. Here are a few examples.

One is the case of medical assistance in capital punishment. Of the 31 States in the US where capital punishment is legal, about half *require* the participation of a physician³⁶. It is not part of the values and principles of medicine to use medicine to kill someone against her will: this violates the principles of autonomy and beneficence, regardless of whether, from the point of view of retributive justice, capital punishment is fair punishment. Thus, it is perfectly consistent for a HCP to be in favour of death penalty and to object to participating in it, and the HCPs' objection should be respected whether or not it is "conscientious".

Another example is provided by a recent case occurred at the Royal Children Hospital in Melbourne, Australia, where doctors refused to discharge some refugee children back to detention camps because doctors thought that this would have compromised the children's health. There

³⁵ T.L. Beauchamp & J.F. Childress. 2012. *Principles of Biomedical Ethics. Seventh Edition*. New York: Oxford University Press.

³⁶ L. Black & R. M. Sade. Lethal Injection and Physicians: State Law vs Medical Ethics. *Journal of the American Medical Association* 2007; 298: 2779

Objection to conscience

might or might not be good reasons for why refugees should be confined to refugee camps. Doctors' personal political views might even be that refugees, including children, should be confined in refugee camps and treated there if necessary. But this is not relevant to the issue whether they have a right to object to discharging these children back to refugee camps. What matters is that there are professional values that justify their objection, namely beneficence and duty of care. In fact, it is worth noting that, in the statement released by the hospital doctors, no use is made of the rhetoric of "freedom of conscience" – actually, conscience is not even mentioned once. Doctors did not claim protection for their conscience. What the doctors offered as reasons to justify their conduct was an appeal to their duty of care. As they wrote, "We are responsible for providing the best possible care to the child in front of us (...) As health staff at a leading children's hospital, our duty is to support child health"³⁷ (Herald Sun, 11 Oct 2015).

6. CONCLUSION

I have argued that, if there are (moral) reasons to accommodate objections in healthcare, these cannot be based on the special value attributed to conscience, understood as a formal notion. I have reached this conclusion by comparing the cases of conscientious objection to abortion and to antibiotics, where objections are based on considerations about the moral status of fetuses and of bacteria. I have shown that the rights to the two

³⁷ The Herald Sun 2015, Royal Children's Hospital Doctors: We Need to Stop Pain for Asylum Seeker Children in Detention Centres, *The Herald Sun*, 10 October, available at http://www.heraldsun.com.au/news/opinion/royal-childrens-hospital-doctors-we-need-to-stop-pain-for-asylum-seeker-children-in-detention-centres/news-story/08ed40bd6870bf931c94714bc222faed?from=herald%20sun_rss

Objection to conscience

types of objection stand or fall together: both objections can be justified by appealing to moral integrity or other values related to the formal character of conscience (e.g. dignity), both objections can be consistent with the prohibition to harm patients, and both objections are not consistent with Western medicine core values. I have taken this counterintuitive conclusion to imply that there is no principled reason to justify conscientious objection, *qua conscientious*, in healthcare. One might reply that this conclusion is unwarranted, because there might be other factors – different from the no-harm constraint and from consistency with the values of medicine - that constrain conscientious objection, in virtue of which objection to abortion would be permissible and objection to antibiotics would not³⁸. In that case, there might be a principled reason to accommodate conscientious objection - for example respect for moral integrity – in both the antibiotics and the abortion case, but there would be constraining factors that outweigh such principled reason only in the case of objection to antibiotics. I am happy to leave this possibility open, although I do not see what these other constraining factors might be. So my conclusion can be seen as a challenge I pose to defenders of conscientious objection to provide the criteria that would allow to distinguish, morally, between conscientious objection to abortion and to antibiotics. Until such criteria are provided, the provisional conclusion that follows from my argument is that there is no principled reason to defend conscientious objection *qua conscientious*. The burden of proof is shifted on to defenders of conscientious objection to argue otherwise.

³⁸ I am very grateful to an anonymous reviewer for this observation.

Objection to conscience

Alternatively, one could simply bite the bullet and conclude that conscientious objection is acceptable and that it is acceptable in every case, i.e. regardless of what it is that a HCP objects to. This is a possibility which I am happy to leave open. I suspect, though, that hardly would anyone accept such a conclusion.

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

The (provisional) conclusion I draw is that considerations about conscience and its value are not relevant to discussions of what HCPs can or cannot, should or should not do.