Two Concepts of Conscience and their Implications for Conscience-Based Refusal in Healthcare

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Abstract: Healthcare professionals are not currently obliged to justify conscientious objections. As a consequence, there are currently no practical limits on the scope of conscience-based refusals in healthcare. Recently, a number of bioethicists, including Christopher Meyers, Robert D. Woods, Robert Card, Lori Kantymir, and Carolyn McLeod, have raised concerns about this situation and have offered proposals to place principled limits on the scope of conscience-based refusals in healthcare. Here, I seek to adjudicate among their proposals. I argue that to adjudicate among them properly it is important to consider the theoretical bases for conscientious objection. I further argue that there are two such bases to be considered. Some conscientious objections are justified by appeal to all-things-considered moral judgments, and some are justified by appeal to the "dictates of conscience." I argue that both of these bases are legitimate and that both should be accommodated in any principled scheme to limit the scope of conscientious refusals in healthcare.

Keywords: all-things-considered judgment; conscience; conscience-based refusal in healthcare; conscientious objection; intuition

Conscientious objection in healthcare is a contentious issue these days and is much discussed; however, this is a relatively recent turn of events. According to Mark Wicclair, a substantial literature on the topic did not develop until the 1970s.[1] One reason why conscientious objection began to be an important issue in healthcare from the 1970s onwards was the hugely controversial establishment of a constitutional right to abortion in the United States, following the United States Supreme Court 1973 decision *Roe* v. *Wade*. Abortion was, and remains, a divisive issue in the United States, and many Americans, including many healthcare professionals, regard abortion as being highly immoral. The American Medical Association's (AMA) principal policy-making body, their House of Delegates, responded to the Supreme Court's decision that same year, by adopting a resolution about abortion, containing the AMA's first explicit conscience clause: "Neither physician, hospital, nor other hospital personnel shall be required to perform any act violative of personally held moral principles."[2]

Another reason why conscientious objection became an increasingly important issue in healthcare from the 1970s onwards has to do with a shift that was occurring in the culture of healthcare throughout the 1970s and 1980s. Before that period, institutional healthcare was something of an anomaly in the Western world. Unlike many other areas of life, which were governed, for the most part, by

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an ethos of respect for individual autonomy, medicine was dominated by a culture of medical paternalism. Under the norms of this culture "doctors made the decisions; patients did what they were told," as Atul Gawande succinctly put it.[3] Physicians did not act without the consent of their patients, but when patients gave consent they were understood to be indicating that they would comply with decisions made on their behalf by beneficent physicians. They were not understood to be making their own decisions.[4] The assumption that physicians were entitled to make decisions on behalf of their patients was widely understood to include decisions with a moral dimension. Gawande reports that his father, who, like him, was a physician, would routinely make moral decisions on behalf of patients who came to him seeking vasectomies. He would typically refuse to perform a vasectomy on patients who were unmarried, or married without children, or whom he considered to be "too young."[5] He was not unusual. Generations of paternalistic physicians had thought and behaved in much the same way, and generations of patients had obediently followed "doctor's orders."

From the 1970s onwards, the assumption that healthcare professionals were entitled to make decisions on behalf of their patients was strongly challenged. These days, the culture of healthcare is governed by "a new ethos of patient autonomy," to use Stephen Wear's language.[6] Physicians are expected to inform patients of their viable treatment options, as well as the risks and benefits associated with those options, and then let those patients decide what treatment options they prefer. Because patients are nowadays expected to make their own medical choices, they are liable to make choices that healthcare professionals find morally objectionable, hence the demand, from healthcare professionals, for recognition of a right to refuse to offer treatment on conscientious grounds. This demand has been acceded to, for the most part, by legislators, who have wanted not to appear to be compelling healthcare professionals to perform controversial procedures that many find morally objectionable. Forty-five states in the United States have legislated a "conscience clause" protecting medical professionals from having to provide abortion services. Many of these conscience clauses are worded broadly enough to allow conscientious objections for healthcare workers who refuse to provide sterilization services or contraception services. Eighteen states specifically allow healthcare workers to refuse to provide sterilization services on conscientious grounds, and 12 states specifically allow healthcare workers to refuse to provide contraception services on conscientious grounds.[7]

Reining in Conscientious Objection in Healthcare

Conscience-based refusals by healthcare professionals have become more and more common; so much so that some bioethicists have begun to be concerned about the widening scope of the entitlement to conscientious objection in healthcare, about the expectations of healthcare professionals in regard to conscience-based refusal, and about the impact widespread conscience-based refusal may have on the provision of medical services. Christopher Meyers and Robert D. Woods discuss the case of healthcare providers working at a Californian county hospital. All except one of them had a conscientious objection to providing abortion services, and that provider was not qualified to conduct an unassisted second trimester procedure.[8] This turned out to be anything but a unique case. Apparently in 1991, 83 percent of United States counties lacked abortion providers.[9]

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As Meyers and Woods point out, California's conscience clause does not require Californian healthcare workers who wish to conscientiously object to providing abortion services, or to providing any other medical services, to articulate reasons that might justify their conscientious objection. All they have to do is sign a form stating that they have "a moral, ethical, or religious objection" to a given medical procedure and they are relieved of the responsibility to perform that procedure.[10] This approach to dealing with conscientious objection in healthcare is common.[11] It appears to have encouraged healthcare providers to cease to view themselves as professionals who have duties to provide a set of services and to start viewing themselves as free agents who are entitled to pick and choose which healthcare services they wish to provide. Discussing the thinking of the Californian healthcare providers they investigated, Meyers and Woods stated that: "In their minds they were free to choose which activities they wished to practise, so long as there were no laws and regulations to the contrary and so long as in doing so they did not directly endanger others."[12]

A 2012 survey of British medical students appears to confirm that this attitude is not only found in America; 45.2 percent of the students surveyed indicated that they believed that they were entitled to object to any medical procedure with which they had a "moral, cultural or religious disagreement."[13] Their beliefs seem to reflect what is in danger of becoming an unwritten rule in contemporary medicine in the Western world. Because medical professionals are not usually under an obligation to explain why they believe that they hold a particular conscientious objection, and do not have their objection evaluated by anyone, their right to conscientiously object is "unlimited in practice."[14]

A growing number of bioethicists, including Meyers and Woods, Robert Card, Lori Kantymir, and Carolyn McLeod, have sought to assess the justifiability of conscience-based refusals in healthcare and thereby find grounds to place limits on their scope.[15] Concern about the potential proliferation of conscience-based refusals is not unique to healthcare. Another area in which this issue has also arisen, and been addressed, is in the military. Service in military forces is demanding and potentially dangerous. Conscripts to military forces are often inclined to appeal to conscientious objection in order to avoid military service. It is widely accepted that we should allow those conscripts who have a strong conscientious objection to participating in war to avoid active military service. However, there are potential conscripts who lack strong conscientious objections to participating in war, but would prefer to avoid military service if they could; and if we make it too easy for such people to avoid military service we run the risk of not being able to maintain adequate armed forces. The problem is usually addressed by making conscientious objectors to military service defend the validity of their particular objection and face the judgment of a tribunal. In America, conscientious objectors need to demonstrate to the satisfaction of a tribunal that they sincerely object to war and that their objection is based on "moral, ethical, or religious beliefs about what is right or wrong."[16]

Meyers and Woods recommend that healthcare institutions take much the same approach to conscientious objectors as does the American military. Conscientious objectors in healthcare should be required to demonstrate that their objections are "genuine" or "profoundly held."[17] This involves, inter alia, demonstrating that their objections are grounded in ethical concerns, rather than, for example, aesthetic or financial concerns.[18] It also involves demonstrating that they are sincerely

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convinced that their right not to violate their conscience is of greater importance than their duty to conduct legal and safe medical procedures.[19] Meyer and Woods can be understood as, in effect, holding that conscientious objectors should be required to demonstrate that their objections are strong enough to count as "passionately held moral or religious beliefs that they must adhere to for the sake of their mental wellbeing."[20]

Another suggestion for assessing whether or not particular conscience-based refusals are legitimate has been made by Card.[21] He holds that conscientious objectors ought to be able to articulate good reasons for their objections. Those who are unable to do so would be refused an entitlement to conscientiously object to the provision of the healthcare services in question. Card is not entirely clear about what constitutes a sufficiently good reason to ground a conscientious objection in healthcare; therefore, one should be wary of some versions of this proposal.[22] One could imagine a tribunal charged with the duty of assessing conscientious objections to the provision of abortion services effectively discriminating against healthcare providers who are opposed to abortion by rejecting all anti-abortion reasoning on the grounds that, in the tribunal's view, there are no good reasons to oppose abortion. But it also seems that the members of a tribunal could recognize that someone has provided sufficiently good reasoning to underwrite a conscientious objection to abortion, or any other controversial medical procedure, even if the majority of them do not accept that reasoning.[23] Therefore, it seems possible to set up even-handed tribunals.[24]

Kantymir and McLeod seek to combine the approaches of Card and Meyers and Woods.[25] In their view, conscientious objectors in healthcare should be required to defend their objection and should be given two options. They should be asked to prove either that their objections are reasonable, or that their objections are "genuine."[26]The various proposals for reining in conscientious objection in healthcare, because of Meyers and Woods, Card, and Kantymir and Mcleod, all have intuitive appeal. Unfortunately, however, these authors all appear to rely on intuition that conscientious objections should be reasonable and/or genuine; and none of them explain why conscientious objections ought to be reasonable and/or genuine. How is it possible to adjudicate among the competing proposals of Meyers and Woods, Card and Kantymir and McLeod? One could try to adjudicate by demonstrating that one of these three proposals has more intuitive appeal than the others, but people are unlikely to agree about the comparative intuitive appeal of the three proposals. What is needed is a theoretically deeper, principled way of adjudicating among the rival proposals. In what follows I will develop such an approach. I will do so by investigating the concept of conscience, and seeing how it can be used to underpin criteria to test the legitimacy of conscience-based refusals.

Conscience and Conscience-Based Refusal

When people talk about conscience-based refusals, they may have in mind two very different bases for refusal. One is all-things-considered moral judgment. For example, physicians may refuse to perform an abortion because they believes that they have considered all of the significant available arguments in favor of and against abortion and, in their all-things-considered judgment, the case against the moral permissibility of abortion outweighs the case for it. Another is that a

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particular subcomponent of a person's mind—the conscience—tells that person to oppose abortion, and that person believes that he or she ought to obey his or her conscience.

The idea that our conscience is somehow separate from the rest of our minds has a distinguished history. Versions of it can be found among the ancient Greeks and Romans, as well as in the writings of Immanuel Kant, Sigmund Freud, and Adam Smith.[27] The Bishop Butler understands conscience as a distinct faculty of the mind offering moral guidance.[28] Another, related way to understand conscience is as a subcomponent of the mind through which an external source of moral authority is able to transmit advice to the conscious mind. This is the classical Christian conception of conscience.[29] According to Pope John Paul II, we can hear "the voice of the Lord echoing in the conscience of every individual."[30]

Paul Thagard and Tracy Finn have recently articulated a contemporary way of understanding discussion of conscience as a subcomponent of the mind, utilizing the conceptual resources of the highly influential dual-processing theory of cognition.[31] The foremost exponent of the dual-processing approach to cognition, in the context of moral psychology, is Jon Haidt.[32] According to dual-processing theorists, human cognition involves a balancing of two basic forms of cognitive processes, deliberate conscious reasoning and automatic, intuitive reasoning, which takes place in nonconscious parts of the brain and delivers "intuitions" to the conscious mind. Thagard and Finn's theory is backed up by a significant body of evidence from neuroscience, cognitive science, psychology, physiology, and cross-cultural studies. They characterize conscience as "a neural process that generates emotional intuitions combining bodily reactions with cognitive appraisal concerning a specific subset of goals."[33] The subset of goals in question contains moral judgments of one's own acts and potential future acts as well as the acts of others. The products of conscience are moral intuitions which serve to guide behavior.[34]

The two sorts of bases for conscientious objection, all-things-considered moral judgments and appeals to the dictates of conscience, are very different from one another. Because of this, it is appropriate to treat these separately when considering and comparing tests for the legitimacy of conscientious objections. If people base a conscientious objection on an all-things-considered moral judgment then they are, in effect, claiming to have done the work of reasoning through a particular moral problem and claiming that their view is based on the results of that reasoning. It is appropriate, therefore, for one to ask them to assure that their reasoning is of a sufficiently high standard to justify allowing them to refuse to do some aspect of their job that they find morally objectionable.

When they articulate their reasons, it might be possible to manage to detect inferential errors, failures to weight significant considerations in a credible way, and failures to consider relevant factors. By requiring conscientious objectors who appeal to all-things-considered moral judgment to demonstrate that they have not based their objection on inferential errors, or failed to consider relevant factors, or failed to weight these credibly, it is possible to rein in appeals to conscientious objection in a principled manner. It would be a mistake to ask too much of the reasoning process behind conscientious objection, especially when considering controversial issues such as abortion. It is important to recognize that there are people who weigh the relative importance of ethically significantly factors differently, in complex cases such as abortion, and have reasoned through the relevant issues to a sufficiently high standard to underwrite conscientious objection.

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It is important to be tolerant of differences of opinion. However, poorly considered judgments are not all-things-considered judgments and should not be treated as such. No one is under an obligation to tolerate weak or lazy reasoning.

Should tribunals demand that conscientious objectors who base their objection on an all-things-considered judgment have a "profoundly held" objection, as Meyers and Woods suggest?[35] It should be required that these conscientious objectors demonstrate that they sincerely believe that their objection is of greater importance than their duty to conduct the legal and safe activities that members of their profession are trained to conduct. But they should not be required to demonstrate that they feel strongly about their objection. People who reason their way to the all-things-considered judgment that abortion is wrong have, in all likelihood, acknowledged to themselves that there are countervailing considerations, and they may have decided that the case against abortion is not overwhelming. They may have concluded that there are good arguments on both sides, but that all things considered abortion is wrong. Furthermore, people whose objections are based on a weighing of all relevant factors that they are aware of should usually acknowledge that there is a possibility that they have failed to consider a factor that is relevant (perhaps because it is not available to them at the time). In other words, they should be committed to the view that, if new evidence comes in, they should be willing to change their mind. The people I have just described may well not be passionate in their opposition to abortion. Still, their objections seem just as legitimate as those of someone who has the same reasons and is passionate about those reasons. Therefore, their entitlement to assert a conscientious objection should not be disregarded on the grounds that they do not feel strongly about their views.

What if their conscientious objection is based on the dictates of conscience rather than all-things-considered moral judgment? In most such cases, the cognitive processes that lead to their conscience dictating to them as it has will be opaque to them; therefore, it is not appropriate to ask them to articulate the reasoning that underpins their judgment. Should people who base their conscientious objections on the dictates of conscience be expected to have "profoundly held" objections? If this means that they feel passionately, then yes. If conscience can be understood as a producer of moral intuitions, as Thagard and Finn argue,[36] then, given what is known about the role of emotion in generating moral intuition,[37] there is good reason to think that conscience will produce powerful emotions, along with moral intuitions. Therefore, people who appeal to the dictates of conscience to ground conscientious refusals should have strong feelings that can be checked for.[38]

Consideration of the different bases for conscience-based refusal sheds light on the intuitive appeal of the different tests for the legitimacy of conscience-based refusal proposed by Card and Meyers and Woods respectively.[39] Card's proposed test for the reasonableness of conscientious objections is intuitively attractive because some conscientious objections are based on all-things-considered moral judgments, and Card has identified an appropriate test for these objections. Meyers and Woods' proposed test for genuineness is intuitively attractive because some conscientious objections are based on the dictates of conscience and Meyers and Woods have identified the best available way of testing these objections. Consideration of the different bases for conscience-based refusal also sheds light on the intuitive appeal of Kantymir and McLeod's combined approach.[40] Because each of the proposed ways of testing conscientious objection is well suited to apply

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to a class of conscientious objections, it is appropriate to allow conscientious objectors to employ either way of demonstrating that their objections are legitimate. Therefore, I agree with Kantymir and McLeod's combined approach, and I have provided a theoretical underpinning for it that is otherwise lacks.

In the final two sections of this article I will consider two lines of objection to my views. The first involves disputing the legitimacy of one of the bases for conscientious objection: appeal to the dictates of conscience. The second involves disputing that the two ways of grounding conscientious objection are really as distinct from one another as I have been assuming.

Conscience and the Legitimacy of Appeals to Intuition

Very few people who are willing to allow conscience-based refusal at all are going to reject conscience-based refusal on the basis of all-things-considered moral judgment. Skeptics are much more likely to be skeptical about the legitimacy of conscience-based refusals based on appeals to the dictates of conscience, especially when these dictates are understood as a source of moral intuition. Daniel Sulmasy is one of a number of bioethicists who are skeptical about the legitimacy of appeals to intuition in ethics. He writes:

> I am deeply sceptical about any form of act intuitionism as a theory of ethics. Our intuitions about particular cases will almost certainly differ. If they do, as they seem to in the troubling cases that confront us, such as abortion and physician-assisted suicide, then all we would be able to do would be to recognize that our intuitions differ. According to a theory of moral intuitionism, these differences could neither be explained nor challenged. This leaves open too many possibilities. My intuitions about what is right and wrong differ from those of the Janjaweed militia in Darfur. I want to reserve the right to challenge their intuitions.[41]

There are two basic concerns expressed here, the concern that intuitions differ and the concern that intuitions cannot be challenged. If one keeps in mind that one is comparing the credibility of appeals to intuition with the credibility of appeals to all-things-considered moral judgment, it becomes obvious that the point about intuitions differing is not telling. All-things-considered moral judgments also differ. The charge that intuitions are not susceptible to challenge is more worrying. Whether one accepts that intuitions can be challenged or not depends, inter alia, on one's theory of how intuitions are influenced by deliberative moral judgment. On Haidt's influential social intuitionist account of moral judgment, it is explicitly acknowledged that the influence of the utterances of others, as well as the influence of one's own conscious deliberation, can help to shape moral intuitions. Intuitions that can be indirectly influenced by others, and by one's own conscious reasoning, can be challenged and can develop in response to such challenges.[42]

I suspect that Sulmasy has in mind a picture of intuitions as invulnerable to the influence of deliberative conscious reasoning, but not many contemporary advocates of intuition as a form of ethical authority hold this extreme view. Sulmasy may have misled himself by starting his discussion of intuitionism in ethics with a caricature of Bishop Butler's view of conscience. He describes Butler as holding the view that conscience is "a little voice whispering to each of us infallibly about

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what we should do,"[43] but although Butler considered conscience to be authoritative, he did not consider it to be infallible.[44] Therefore, this is merely a caricature. In any case, there are sophisticated recent versions of ethical intuitionism available, which Sulmasy might have considered, which accept that intuitions differ, and which do not treat intuition as invulnerable to the influence of deliberative conscious reasoning.[45]

There is another reason for treating the dictates of conscience as an acceptable basis for conscience-based refusal, and this is the importance of epistemic modesty. We should accept that it is possible that at least some of our views, including some of our moral views, are wrong and that others may be right, even in situations in which we are confident that we have considered all relevant factors. We should accept that it is possible that we have overlooked some or other relevant factor, or failed to appreciate the significance of a factor that we have considered, or that some or other inference that we have drawn has been made in error, unbeknownst to us. Because we should accept that we may be wrong about moral matters, we should also accept that others may be right, and tolerate differences of moral opinion.[46]

Just as we should accept that it is possible that some of our moral views might be wrong, we should accept that it is possible that we may be using the wrong methods to try to locate moral truths. Therefore, we should tolerate methodological moral differences. This does not involve accepting that any and all methods of locating moral truths are acceptable, but it does involve accepting that some methods other than the ones that we ourselves prefer to use to identify moral truths could be legitimate. Methods that are widely used by many people ought to be tolerated. Many people believe that they should make moral decisions by obeying the dictates of their conscience. Even if we do not accept that it is the appropriate way to make moral decisions, we ought to tolerate it as a potentially legitimate method of making moral decisions, and this tolerance involves allowing that it is a legitimate basis for conscience-based refusal in healthcare.

Are the Two Bases for Conscience-Based Refusal Really All that Different?

Appeals to the dictates of conscience seem very different from all-things-considered moral judgment. However, it might be disputed that the difference is really as stark as I have portrayed it. It might be argued that when we claim to obey our conscience we are typically not, despite what the language of obedience suggests, blindly following its dictates. Instead, we are making a conscious decision to affirm the recommendations of conscience; and if our conscience were to advise us to act in ways that conflict with our understanding of what morality requires of us, then we would be liable to ignore our conscience. Mark Twain's Huckleberry Finn famously fails to act on his conscience. Twain suggests that he is right to do so because the formation of his conscience is corrupted by the institution of slavery that is a structural feature of the society in which he has grown up.[47] Conscience might tell a physician that it is impermissible to perform an abortion, but if that physician is aware of good arguments in favor of abortion, then that physician would be liable to ignore his or her conscience. Conscience informs conscious moral judgment, but, it might be said, what really matters is the conscious moral judgment that we end up acting on. Therefore, although there are differences between all-things-considered moral judgments and conscious moral judgments

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that involves the input of moral intuitions generated by conscience, both are forms of conscious moral judgment. This way of blurring the differences between all-things-considered moral judgment and moral judgment based on the dictates of conscience calls into question the appropriateness of recognizing two distinct bases for conscience-based refusal in healthcare.

The abovementioned objection is worth considering, but the assertion that appeal to the dictates of conscience is merely one form of conscious moral judgment is misleading. Conscious deliberative reasoning does not only function to over-ride the moral intuitions generated by conscience. It also plays another important role, which is to find post-hoc reasons to justify conclusions that have already been accepted on the basis of moral intuitions generated by conscience. According to Haidt, this is by far the most the common use for conscious deliberative moral reasoning. Haidt does not deny that people sometimes employ conscious deliberative reasoning to over-ride their moral intuitions, but he sees this as a rare occurrence.[48] Despite appearances, most people do not usually employ conscious deliberative reasoning to check that the dictates of their conscience conform to their understanding of morality. It is more common for their understanding of morality to adjust until it conforms to the dictates of their conscience.

Another reason to be wary of simple attempts to reduce appeals to the dictates of conscience to conscious moral judgment is that there are times when people will find that they are psychologically unable to allow conscious moral judgment to over-ride the dictates of conscience, even when they think that they should. The following fictitious scenario is an illustration of such an instance. Suppose that my conscience tells me very clearly that it is wrong to steal. Once when I was young I stole a chocolate bar from a shop and I was wracked with feelings of guilt and unable to sleep for several nights. Since then I have never stolen. However, very recently I ran into an Oxford-based academic who has started an organization called "Stealing What We Can." He pointed out to me that if I stole items of value from rich residents of First World countries, which they could easily do without, I could sell these items and donate money to Stealing What We Can, which funds highly effective charities that save lives and help to eliminate Third World poverty. Therefore, he argued, I should steal such items. When I thought about it I realized that he was right. That evening I went out and stole a bicycle. I then sold it and was able to donate enough money to Stealing What We Can to lift 12 impoverished residents of Third World countries out of poverty for a year each. Unfortunately for me, however, I was unable to sleep that night, or the next night, as I found myself wracked with feelings of conscience-induced guilt. However, when I tried to reason about this issue again it still seemed to me that stealing was morally permissible, and perhaps even morally obligatory, as long as the proceeds of crime were donated to Stealing What We Can. I know that I should keep stealing and giving the proceeds to Stealing What We Can, but I now start to feel that I am unable to live up to my ideals. Therefore, I resolve, rather, to avoid further deliberation about the subject, and, obeying the dictates of my conscience, refrain from stealing.

It seems to me that no one should insist that I continue to steal in the previous scenario, given the psychological trauma that stealing induces in me, even though stealing is what my all-things-considered moral judgment recommends. I have a conscientious objection to stealing and I should be allowed to act on that conscientious objection, even though it goes against my conscious deliberative moral judgment.

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Parallel cases can also arise in healthcare. Suppose that a physician's conscience tells her that abortion is wrong and that she should not conduct abortions. At an early stage in her career she conducted an abortion and was wracked with feelings of guilt. She resolved, therefore, to never perform an abortion again. However, she runs into a pro-abortion advocate who convinces her that the arguments in favor of abortion outweigh the arguments against it. She goes ahead and conducts an abortion, but is again wracked with feelings of guilt and finds herself unable to sleep for two nights. When she thinks about it again her view is still that abortion should be available upon demand and that she should be willing to conduct abortions when patients request them. However, she resolves to cease thinking about the issue and cease conducting abortions. Surely this physician should be allowed to conscientiously object to the provision of abortion, even though her all-things-considered moral judgment is that abortion is morally permissible.

Moral judgments made on the basis of the dictates of conscience are sometimes over-ridden following the scrutiny of conscious moral judgment, but they are not always subject to this scrutiny. Furthermore, there are times when it is not appropriate to allow conscious moral judgment to over-ride the dictates of conscience. Therefore, moral judgments made on the basis of the dictates of conscience are not merely a form of conscious moral judgment. The differences between all-things-considered moral judgment and moral judgment formed on the basis of obedience to the dictates of conscience run deep. These differences warrant recognition of two distinct bases for conscience-based refusal in healthcare.

Notes

1. Wicclair reports that he was unable to find any academic articles published prior to the 1960s that specifically addressed the topic of conscientious objection in healthcare. Wicclair M. *Conscientious Objection in Health Care: An Ethical Analysis*. Cambridge: Cambridge University Press; 2011:14.
2. Cited by Wicclair 2011, at 16.
3. Gawande A. Whose body is it anyway? *The New Yorker*, October 4, 1999:84.
4. Clarke S. Informed consent in medicine in comparison with consent in other areas of human activity. *The Southern Journal of Philosophy* 2001;39:173.
5. Gawande A. *Complications: A Surgeon's Notes on an Imperfect Science*. London: Profile Books; 2002:210.
6. Wear S. *Informed Consent: Patient Autonomy and Physician Beneficence within Health Care*, 2nd ed. Dordrecht: Kluwer, 1998. See Chapter Two in particular.
7. Guttmacher Institute. State Policies in Brief: Refusing to Provide Health Services, 2015; available at http://www.guttmacher.org/statecenter/spibs/spib_RPHS.pdf (last accessed 23 Oct 2015).
8. Meyers C, Woods RN. An obligation to provide abortion services: What happens when physicians refuse? *Journal of Medical Ethics* 1996;22:115–20.
9. See note 8, Meyers, Woods 1996, at 115. In Italy, approximately 70 percent of gynecologists conscientiously object to abortion. For discussion of the difficulties this situation creates for Italian women who wish to have an abortion, see Minerva, F. Conscientious objection in Italy. *Journal of Medical Ethics* 2015;41:170–3.
10. See note 8, Meyers, Woods 1996, at 117.
11. The United Kingdom is another place where healthcare workers are not required to provide a justification for conscientious refusals. See Cowley C. Conscientious objection and healthcare in the UK: Why tribunals are not the answer. *Journal of Medical Ethics* 2016;42:69–72.
12. See note 8, Meyers, Woods 1996, at 116–7.
13. Strickland, SLM. Conscientious objection in medical students: A questionnaire survey. *Journal of Medical Ethics* 2012;38:23.
14. Kantymir L, McLeod C. Justification for conscience exemptions in healthcare. *Bioethics* 2014;28:16.
15. Card R. Conscientious objection and emergency contraception. *American Journal of Bioethics* 2007;7(6):8–14; Card R. Conscientious objection, emergency contraception, and public policy.

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Journal of Medicine and Philosophy 2011;36:53–68. See also note 8, Meyers, Woods 1996, and note 14, Kantymir, McLeod 2014.

16. Salmon DA, Seigel, AW. Religious and philosophical exemptions from vaccination requirements and lessons learned from conscientious objectors from conscription. *Public Health Reports* 2001;116:293. The wording, cited by Salmon and Siegel, is from a 1970 Supreme Court decision: *Welsh* v. *United States*, 398 US 333.
17. Meyers C, Woods RN. Conscientious objection? Yes, but make sure it is genuine. *American Journal of Bioethics* 2007;7(6):20.
18. See note 8, Meyers, Woods 1996. Meyers and Woods discuss cases in which physicians have objected to conducting abortions on the grounds that abortion services are not lucrative and that second trimester abortions are "complex and frankly ugly," at 118. Minerva mentions the case of a conscientious objector to abortion who was caught conducing abortions in his private practice: See note 9, Minerva 2015, at 172. Presumably his motives were financial.
19. See note 17, Meyers, Woods 2007, at 20.
20. See note 14, Kantymir, McLeod 2014, at 16.
21. See note 15, Card 2007 and Card 2011.
22. This line of criticism of Card is developed further in Marsh J. Conscientious refusals and reason-giving. *Bioethics* 2014;28(6):313–9. For a response and elaboration of the reason requirement, see Card R. Reasonability and conscientious objection in medicine: A reply to Marsh and an elaboration of the reason-giving requirement *Bioethics* 2014;28(6):320–6.
23. Card defends his proposal against similar objections. See Card R. In defence of medical tribunals and the reasonability standard for conscientious objection in medicine. *Journal of Medical Ethics* 2016;42:73–5.
24. The issue of even-handedness looms large in historians' discussions of military tribunals. In the United Kingdom, the tribunals set up during the First World War were generally regarded as hostile to conscientious objectors. However, there were exceptions. According to McDermott, even the No Conscription Fellowship, an organization which, as its name suggests, opposed conscription, acknowledged that some tribunals attempted to adjudicate cases of conscience fairly. See McDermott J. Conscience and the military service tribunals during the First World War: Experiences in Northamptonshire *War in History* 2010;17:74. Harries-Jenkins suggests that most First World War tribunals were composed solely of members who were unsympathetic to conscientious objects, but that Second World War tribunals were more evenly balanced and exercised a "positive, if less Draconian jurisdiction." See Harries-Jenkins G. Britain: From individual conscience to social movement. In: Moskos CC, Chambers JW II, eds. *The New Conscientious Objection: From Sacred to Secular Resistance*. Oxford: Oxford University Press; 1993 69.
25. See note 14, Kantymir, McLeod 2014.
26. Kantymir and Mcleod argue that if conscientious objectors opt for the latter course of action, they should be required to do slightly more than meet Meyers and Woods' genuineness criterion. They should also be required to demonstrate that "patients will still get care the care they need in a respectful and timely fashion, any empirical beliefs on which the objection rests are not baseless, and the moral or religious beliefs on which it rests are not discriminatory" (See note 14, Kantymir, McLeod 2014, at 21). Discussion of whether or not these additional requirements are warranted is beyond the scope of this article.
27. Sorabji R. *Moral Conscience through the Ages*. Oxford: Oxford University Press; 2014:1–2.
28. See note 27, Sorabji 2014, at 169–75.
29. Lyons W. Conscience – An essay in moral psychology. *Philosophy* 2009;84(4):478–82.
30. John Paul II. *Evangelium Vitae*. Vatican City: Libreria Editrice Vaticana; 1995:I 23.
31. Thagard P, Finn T. Conscience: What is Moral Intuition? In: Bagnoli C, ed. *Morality and the Emotions*. Oxford: Oxford University Press, 2015:150–69.
32. Haidt J. The emotional dog and its rational tail: A social intuitionist approach to moral judgment. *Psychological Review* 2001;108:814–34; Haidt J. *The Righteous Mind: Why Good People are Divided by Politics and Religion*. New York: Pantheon; 2012. Haidt does not equate the dictates of moral intuition with conscience. He does not discuss conscience.
33. The cited text is from the abstract for Thagard, Finn 2015 (see note 31).
34. See note 31, Thagard, Finn 2015, at 150.
35. See note 8, Meyers, Woods 1996; see also note 17, Meyers, Woods 2007.
36. See note 31, Thagard, Finn 2015.

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37. See note 32 Haidt 2012; see also Greene J. *Moral Tribes: Emotion, Reason and the Gap between Us and Them*. New York: Penguin; 2014.
38. It is possible that there are some people who are psychologically unusual and who do not experience the powerful emotions that are usually associated with moral intuition. This may be the case for some severely autistic people. If such psychological unusualness can be demonstrated, then decisionmakers should be willing to make exceptions.
39. See note 15, Card 2007 and Card 2011; see also note 8, Meyers, Woods 1996 and note 17 Meyers, Woods, 2007.
40. See note 14, Kantymir, McLeod 2014.
41. Sulmasy D. What is conscience and why is respect for it so important? *Theoretical Medicine and Bioethics* 2008;29:137.
42. See note 32,Haidt 2001 and Haidt 2012.
43. See note 41, Sulmasy 2008.
44. See note 27, Sorabji 2014, at 170.
45. See, for example, Audi R. *The Good in the Right: A Theory of Intuition and Intrinsic Value*. Princeton: Princeton University Press; 2004; and Huemer M. *Ethical Intuitionism*. New York: Palgrave Macmillan; 2005.
46. See note 41, Sulmasy 2008. Sulmasy appears to accept that epistemic modesty is important. He discusses the topic under the broader heading of tolerance, and he is not wrong to do so. There is a tradition, going back to Pierre Bayle (see Bayle P [Tannenbaum AG, ed. and trans.] *Philosophical Commentary*. New York: Lang, 1685 [1987]) of grounding the value of tolerance of differences of opinion, especially differences of religious opinion, on the virtue of epistemic modesty.
47. Twain M. *The Adventures of Huckleberry Finn*. London: Penguin Classics; 1884 [2012].
48. See note 32, Haidt 2001 and Haidt 2012.

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