

My Conscience May Be My Guide, but You May Not Need to Honor It

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Abstract: A number of healthcare professionals assert a right to be exempt from performing some actions currently designated as part of their standard professional responsibilities. Most advocates claim that they should be excused from these duties simply by averring that they are conscientiously opposed to performing them. They believe that they need not explain or justify their decisions to anyone, nor should they suffer *any* undesirable consequences of such refusal.

Those who claim this right err by blurring or conflating three issues about the nature and role of conscience, and its significance in determining what other people should permit them to do (or not do). Many who criticize those asserting an exemption conflate the same questions and blur the same distinctions, if not expressly, by failing to acknowledge that sometimes a morally serious agent should not do what she might otherwise be expected to do. Neither side seems to acknowledge that in some cases both claims are true. I identify these conflations and specify conditions in which a professional might reasonably refuse to do what she is required to do. Then I identify conditions in which the public should exempt a professional from some of her responsibilities. I argue that professionals should refuse far less often than most advocates do . . . and that they should be even less frequently exempt. Finally, there are compelling reasons why we could not implement a consistent policy giving advocates what they want, likely not even in qualified form.

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A number of healthcare professionals assert a right to be exempt from performing some action currently designated as one of their professional duties. Advocates of this right standardly claim that they should be excused from these duties without prerequisites or conditions, simply by averring that they are conscientiously opposed to performing them. They declare that they need not explain or justify their decisions; nor should they suffer any undesirable consequences of their refusal.

This unqualified right differs significantly from the longest-standing legally recognized right of conscience: conscientious objection to war. Exemptions allowing military conscripts to do alternative (nonmilitary) service have been entrenched in U.S. and U.K. law only since World War II. In both countries, the criteria for obtaining conscientious objector status have remained relatively constant. A man (men were the only conscripts) could be exempt from military service if he could (1) explain why he was opposed to *all* wars, (2) demonstrate his sincerity by showing through his application and letters of recommendation that he behaved consistently with his avowed belief, and (3) be willing to do alternative service as compensation for being granted this exemption. Because obtaining objector status was difficult, relatively few people sought this exemption; even fewer were granted it.

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The U.S. legal landscape changed after the U.S. Supreme Court's *Roe v. Wade* decision legalizing abortion. In response to the court's ruling, Congress adopted a law exempting physicians and nurses from performing or assisting in an abortion if doing so "would be contrary to his [their] religious beliefs or moral convictions."¹ Unlike conscientious objection to war, this law does not specify any requirements for obtaining that exemption, either before or after it is granted. These medical professionals need only say "I am conscientiously opposed," and they are thereby exempt. This first appearance of an unqualified right to conscience was the first wave in what has become a legal tsunami. The right in the United States was strengthened by four subsequent amendments, as well as regulations promulgated by the Department of Health and Human Services. At least nineteen countries now have conscience clauses of various scope and stringency.² Every day more people claim a right to be exempt from doing actions that they (usually professionals) are standardly expected to do. Many legislators and candidates have promised legislation expanding the scope of this right, including laws that would permit retailers and government agents to refuse to serve homosexuals.

What escapes advocates' notice is that such legislation would not grant to others a right that they emphatically assert for themselves. They would not categorically exempt others from doing actions that violate *their* consciences. They would not think that a Hindu waitress should be able to refuse to serve them steak, that a Muslim airline attendant should be able to refuse to serve them wine,³ that a Christian Scientist dentist should be exempt from prescribing them antibiotics for their infected tooth (let alone refusing to tell them that other dentists would standardly write such a prescription), or that a Shaker pharmacist should be able to legally refuse to fill their Viagra prescription. Neither would these people countenance a waitress condemning them if they ate meat, a dentist berating them for accepting antibiotics from another practitioner, or a pharmacist reproaching them for taking Viagra. The problem, I suspect, is that these advocates cannot imagine that other people's moral and religious beliefs radically diverge from their own.

Nonetheless, although I argue that this absolutist claim of a right to conscience is indefensible, the advocates' rhetoric expresses a hope most of us share. We would like to live in a world where we are never required to act in ways we think are immoral; we would like never having to suffer because of our moral choices. Unfortunately, this hope is a fantasy. Avoiding doing what we deem wrong sometimes comes at a considerable cost. This is not a problem unique to professionals. It is a fact of work, life, and morality.

Before assessing advocates and their critics' assertions, we must understand how we become mired in this argumentative quicksand. Those who claim a right to be exempt err by blurring or conflating three issues about the role of conscience in determining what they should do and what other people should permit them to do. Many who criticize those asserting an unqualified right conflate the same questions and blur the same distinctions, if not expressly, by failing to acknowledge that sometimes a morally serious agent should not do what she might normally be expected to do. So the debate rages unproductively. One side avers that these professionals should always follow their consciences; the other side insists that the professionals should not be exempt from fulfilling their assigned duties.

Here are the three often-conflated issues for and about a fictional professional (Beverly) who claims that doing X, which is currently required of professionals like her, would violate her conscience.

1. All things considered, Beverly should not do X.
2. Beverly sincerely believes that, all things considered, she should not do X.
3. Beverly has a right to be exempt from doing X.

Advocates of an absolutist right to conscience do not expressly distinguish these issues. However, if presented with these three claims, they would avow that (2) is the only issue. They believe that Beverly is the best judge of what she believes and whether she is sincere; they further believe that if (2) is true, then (1) and (3) are as well.⁴ Those rejecting these rights' claims reject (3); most then infer that (1)—and often (2)—are also false.

It seems neither disputant recognizes that perhaps Beverly should not do X, *and* that others need not exempt her. Each side fails to entertain this option because the professional making the rights claim cannot imagine how any right-thinking person would do X, whereas critics cannot imagine how any right-thinking person would not.

Advocates of this unqualified right to an exemption *must* conflate or blur these issues if their argument is to be even remotely plausible. Although their critics also often conflate them, they need not, and, I shall argue, should not.

Clarifying and Focusing the Options

Before addressing the previous issues, we must first isolate significant ambiguities in each claim.

We might think that the truth of (1) dictates the proper resolution of the second and third issues. It doesn't.

Clearly the truth of (1) does not entail that Beverly sincerely believes (1). More relevant to the current debate, the truth of (1) would not show that others must legally exempt her from doing X. Law cannot always accommodate every individual's moral judgment. It cannot even accommodate everyone's all-things-considered moral duty. As I elaborate throughout the remainder of this section, it should not even try. Beverly may have an all-things-considered moral duty to keep a promise, but unless one construes what it means to have such a duty trivially—such that it *entails* that the law must accommodate her—there is no compelling reason why the law must accommodate her.⁵ At most, (1)'s truth *might* give others a *prima facie* moral reason to accommodate her—that is, a reason to place on the scales when developing laws and policies. However, because Beverly can never be certain of what she morally must do all things considered, this *prima facie* moral reason would not have serious legal bite: it would not provide a strong case for a legal exemption.

Moreover, unless we use a nonstandard meaning of (1), its truth (from some god's-eye perspective) does not determine what in particular Beverly should do (as a moral agent with her beliefs and in her environment). We evaluate an agent not primarily by what she should do from a purely objective viewpoint⁶ but by how she should act given what she knows, believes, and should believe. We do not and should not evaluate a racist in 1815 rural Alabama in the same way we evaluate a

racist professional in 2015 Minneapolis. Therefore, if, without evidence, Beverly believes what happens to be true, then she has no good reason to act on her belief and we have no reason to legally exempt her. We need not honor people for making lucky guesses.

Conversely, even if someone with a god's-eye view knew that (1) were false, we should not automatically infer that Beverly should do X. There are two reasons. First, (1)'s falsity might simply mean that doing X is morally permissible but not morally mandatory. Second, even if (1) is false—that is, she should not refuse to do X—she could have plausible reasons for thinking that she should refuse.

The second claim—that Beverly sincerely believes that, all things considered, she should not do X—is also troublingly vague. First, it suggests that all beliefs are sincere. That is a mistake unless the adjective “sincere” is wholly empty, akin to calling something a “square, four-sided, two-dimensional” figure. “Sincerity” must mean something with more cognitive and motivational heft. It denotes an earnestness or wholeheartedness that does not characterize all beliefs.

Second, and more importantly, the truth of (2) does not show that Beverly's beliefs are appropriate (i.e., plausible, relevant, and sufficient), unless we have an idiosyncratic notion of sincerity. Such definitional gerrymandering renders (2) morally uninteresting. If we instead use the ordinary understanding of sincerity, we see that Beverly's earnest belief might have resulted from: (a) brainwashing, (b) unquestioned parental instruction, or (c) misinformation spouted by a friend or gleaned from an unreliable website or “news” source. We should not view our own or others' behavior equivalently if the grounds for our (their) belief(s) are these sources rather than careful moral deliberation. All acts of conscience are not created equal; not even all acts of *sincere* conscience. Of course, advocates think that their claims are not just sincere but reasonable. As we shall see, that belief is dubious.

The third claim—that Beverly has a right that she be exempt from doing X—is multiply ambiguous. It might mean that she has a moral or a legal right to be exempt. Laws, however, need not enforce every moral right. A friend may have a moral right—but not a legal right—that I not betray her confidence. Second, the claim that Beverly has a right to not be required to do X might simply mean that she is not legally compelled to do X. However, that is compatible with rejecting the claim that she should be exempt with impunity. In a world without conscience clauses, Beverly can resign any job or post that makes demands she finds morally odious. Or, she might retain her job but subsequently be denied a raise or a promotion. In such a world she is not *compelled* to act against her conscience.

Of course, this is not what advocates want. They think the third claim means that Beverly has an absolute right to refuse to do X within any conditions. She does not have to explain her opposition; she cannot be questioned about her rationale or her consistency. Moreover, she may not be fired, denied raises or promotions, moved to a less desirable office, and so on.

The final and most plausible rendering of the third claim is that Beverly has a *conditional* right to not do X: that is, she is exempt from doing X *if* she satisfies certain criteria—some before and others after the fact. Such a right would be like many rights. Jo has a right to drive a car, but only if she reaches the proper age, has passed the relevant driving test, and has adequate liability insurance on her car; she is able to maintain the license only if she does not receive too many (or one very severe) driving citations and does not lose her sight. Michael has the right to

be a nurse, but only if he obtains a nursing degree or certificate that demonstrates his competence; he has the right to continue nursing only if he is not convicted of negligence, and so on. Katarina has the right to practice law in Missouri, but only if she has passed the Missouri bar exam, or the exam in a state with a reciprocal agreement with Missouri; she can continue to practice law there only if she is not disbarred. Jo, Michael, and Katarina have genuine rights. But none of these rights dictate that others *must* let her or him begin or continue these activities unless she has satisfied the relevant criteria.

Having clarified the issues, and if we assume—for purposes of argument—that Beverley's belief is sincere, we can narrow the discussion to two practical questions.

Two Questions

The first question is one Beverley (and other professionals) must answer. The last one the public and lawmakers must answer—although both Beverley and the public doubtless have views about how the other *should* answer *their* questions.

1. What should Beverley do?
2. Should we (the public) exempt Beverley from doing X?

Given the epistemological and moral difference between Beverley's having a reasonable and an unreasonable belief, the second question takes two forms.

- 2a. Should we exempt her from doing X if she has a *sincere and reasonable* belief that she should not do X?
- 2b. Should we exempt her from doing X if she has a *sincere and unreasonable* belief that she should not do X?

Advocates ask only the first question and usually assume that they know the answer. They also think (2b) is a faux option, since they are confident that these claimants' beliefs are reasonable and sincere. Critics usually ask only the second version of the second question (2b), since they think that Beverley should do X—and usually also think that her belief is unreasonable. Setting these complications momentarily aside, how should Beverley decide whether she should refuse to do X?

When Should Someone Act on Her Conscience?

With these clarification and cautionary notes in place, we can now ask, "Should Beverley follow her conscience and refuse to do X?" Many people think this is a trick question. On their view, someone should *always* do what her conscience dictates. However, this claim is plausible only if we employ a morally loaded view of "conscience," that is, if we interpret this question thusly: "If I sincerely, thoughtfully, and consciously believe that I ought to not do X, and, all things considered, I ought not do X, then should I refrain from doing X?" So interpreted, the answer is trivially "Yes." However, this is not the question any person or professional, no matter how conscientious and sincere, must answer. The decision whether to refuse to do X is serious, typically controversial, and often perplexing.

Of course, sometimes professionals *should* refuse: for example, physicians directed by the Nazis to conduct experiments on Jewish inmates⁷ and physicians told to

experiment on syphilitic African American men.⁸ I wish these professionals had had the moral courage to refuse.

Although a professional should *sometimes* refuse to do X, there are four inter-related considerations that show why a morally serious, intellectually honest professional would be hesitant to refuse. First, she should consider the *degree* to which her actions harm others, especially if, second, she is a professional, and those she serves and harms are her clients. Third, she should understand that what morality requires of her as an individual may differ from what it requires of her as a professional. Fourth, she should be aware of the ways that even a thoughtful, conscientious person can misidentify her judgments and motivations about what she should do. She should then take steps to protect herself from these sources of error.

Effects on Others

Morality is not just about washing one's moral hands, about maintaining one's moral purity. It primarily concerns how each person's actions or inactions affect the welfare, health, and interests of others. That is true whether she is a car mechanic, a baker, or a pancake maker. That is not to say that each of us must cater to every person's desires. If Thelma repairs cars for friends and family in her garage, then Geraldo, a stranger, cannot justifiably demand that she also repair his car. And no matter how repugnant we find his reasoning, Duke, the Grand Wizard of the KKK, may invite friends to his house for a pancake breakfast without being thereby committed to also inviting his African American neighbor. Each of us can favor friends and family to some degree without committing ourselves to doing similar favors for others.

However, if Thelma opens Repairs-R-U's, then she should repair the car of any person who comes to her shop and has the financial means to pay, at least if the requested repairs are within her mechanical wheelhouse. She shouldn't refuse to serve a patron because he has freckles, holds religious or political views she loathes, or is short, or simply because she dislikes the cut of the potential patron's jib. It doesn't matter if she finds serving redheads, Catholics, or people with big ears morally objectionable.

Of course, when Thelma denies service to Jamal, he can likely go down the street to Bertha's Fix-it-Up Shop. What is objectionable about Thelma's action is not that Jamal is inconvenienced, although that is usually true. It is that in denying him a public service because she does not like his looks or beliefs, or because she fears that in fixing his car she will be participating in what she deems his evil ways (driving to a meeting of the local socialist's group), Thelma's refusal demeans him.

That is why once Thelma obtains a license to repair cars, she has abandoned her right to be picky about whom she serves. By opening for business (at least in a financial system like those in most of the developed world), she thereby "pledges" to serve those who want to frequent her establishment.

Likewise for Duke. If after his neighbors praise his pancake-making prowess, he opens an International House of Pancakes shop, he cannot refuse to serve African Americans, no matter how loathsome he finds that prospect. Thelma's and Duke's refusals are disrespectful, an assault on the dignity of those they refuse to serve. Requiring Thelma to serve people whose views or behaviors she dislikes and requiring Duke to serve people whose race he dislikes is not an attack on *their* dignity.

If Thelma and Duke think otherwise, then they are confused, selfish, or trapped in a cultural time warp. They are accustomed to living in a world where each could provide services only to those they want to serve. When laws changed, they could no longer do what they once took for granted. Now they feel morally put-upon. Although their psychological reaction is understandable, it is morally wrongheaded.

Especially If One Is a Professional

Especially if Thelma and Duke are professionals. As professionals they have a more compelling responsibility to consider the myriad ways that their refusals harm their patients or clients. Professions were created and sustained because the state determined that the public would be best served if specifically trained people catered to its citizens' vital needs.⁹ Physicians oversee and promote people's health; lawyers protect people in legal proceedings, often when their freedom and economic well-being is threatened; engineers protect people who work in the buildings and drive on bridges they design. Professionals protect people's significant interests that few of us can promote on our own. The average citizen cannot keep up with the latest developments in medicine, law, or materials science. That is why the average person is vulnerable to professionals, and professionals have special duties to their clients.

This is not to say that professionals should never refuse to do what their clients request. A surgeon shouldn't amputate a person's healthy leg because the patient believes that having a prosthetic leg would look cool. An engineer shouldn't use substandard materials to build a bridge over the Thames River because her boss wants to make a higher profit. What it does mean is that instances in which she refuses to do what she is asked or expected to do will be rare, and then normally will occur only if her patient or client requests that she do something demonstrably at odds with the rationale of her profession.

None of this suggests that we should deify current professional practice. Many German physicians thought that it was acceptable to experiment on Jewish prisoners. For many years, most physicians in the United States thought it was acceptable to standardly refuse to tell patients that they were dying. Reflective persons see now that these professionals' judgments were misguided. Conscientious physicians should sometimes buck current practice. For instance, I think Timothy Quill's decision to heed his patient's request for him to help her die rather than face prolonged and painful death was correct and courageous, although in doing so, he could have lost his license to practice medicine.¹⁰

However, in the absence of compelling evidence, professionals would be wise to follow their profession's guiding norms, especially if they expect to be exempt without explanation, justification, or detrimental consequences. I find the stance of those advocating this unqualified right morally peculiar. If I knew that my views clashed with current professional practice, I would want to justify my actions to others. Only then would I have a reason to be confident when bucking governing norms. Perhaps, too, I might help others understand why I think those norms are mistaken.

I suspect most advocates will think that the preceding arguments are meaningless hand-waving or deliberate prevarication. They think that the choices they face

are morally equivalent to those faced by the Nazi and Alabama physicians. They just think that they have an abundance of courage that these previous physicians lacked. This equation is dubious. It ignores two key differences between current advocates' choices and those faced by these previous medical professionals. First, a current advocate of a right to conscience expects the exercise of her conscience to be painless; in contrast, those historical physicians knew they would pay a high price for following their consciences. Second, there are demonstrable moral asymmetries between the cases: (1) Nazi doctors who refused wouldn't have harmed anyone—unless one distorts ordinary language to say that they “harmed” the Nazi hierarchy by refusing to do its bidding; in contrast, doctors who refuse to conduct abortions or dispense the morning-after pill or birth control do, *sans* compelling argument, harm women needing their services. (2) Whereas the Nazi physicians harmed other humans who *indisputably* had *full moral status*, it is debatable whether sperm, conceptuses, or fetuses have any—let alone similar—moral status.

Think about it this way: the medical practitioners in question have a fiduciary duty to their female patients. In refusing to fulfill the woman's wishes, they fail to fulfill their fiduciary duties to them. These same physicians have no special duty to the sperm, the conceptuses, or the fetuses. If they have any responsibility to them, it would be a *general* duty not to cause harm, not a specific duty as professionals, duties they voluntarily assumed. Put differently, although no one doubts that the mother is a full human being, with all the rights human beings usually have, many people do doubt that (1) some of these drugs cause abortions and that (2) a fetus is a full human being. Even if these protopersons have some moral status, they are not demonstrably beings with the same status as the women who choose to remove unwanted sperm, conceptuses, or fetuses from their bodies. Therefore, if these practitioners are self-critical, they should understand that in refusing to perform wanted abortions, or to write prescriptions for birth control or the morning-after pill, they are *definitely* harming the interests of the mother as interpreted by her, while, at most, they are protecting the *possible* interests of a *possible* person. That asymmetry should give them extreme pause.

Individual versus Role Morality

Those asserting a right to conscience characterize their decision as answering the following question: “Should I do what I think it is *personally* wrong for me to do?” Depending on how *this* question is interpreted, the answer might be “No.” As an individual, Beverly arguably should not act contrary to her strong moral beliefs, even if those beliefs are, unbeknownst to her, mistaken. However, *as a professional* she is asking the wrong question. In caring for her clients or patients, a professional is not engaging in a private moral matter. In virtue of her role, she has special obligations to her patients or clients. By joining this profession, she voluntarily assumed a fiduciary duty to them.

Given that, in deciding whether, all things considered, she should want or expect to be exempt from doing X, Beverly should think carefully about the differences between individual and role morality. Professions are justified by their role in achieving valuable social ends; a profession can standardly achieve those ends only if its practitioners generally fulfill expectations. It would be shocking if those expectations always matched what the professionals think it is morally appropriate for them to do as private individuals.

Soldiers are supposed to follow orders. If they didn't, armies would collapse. Police are obliged to enforce the law, even if they think the law is ill advised. Teachers are supposed to fail students who do not do passing work, even if they personally like the students. Journalists are expected to tell the truth, even if, in so doing, they harm a close friend. These are all examples of behaviors one arguably should not perform as a morally sensitive *private* individual. However, as a professional promoting a public service, Beverly sometimes needs to do what she finds morally repugnant when acting as an individual.

The idea that professionals have special duties to their patients and clients is reinforced by the expectation of reciprocal respect grounded in the principle of publicity and in the rule of law—principles endorsed by liberals and libertarians alike.^{11,12} The idea is simple: legal, political, and professional systems should be designed so that citizens can make reasonable decisions about how to behave based on knowledge of what the law expects. In the same way, patients and clients want to be able to make prudent decisions based on predictions about how professionals will behave. Those predictions are reasonable only if professionals generally follow their profession's norms. That helps explain why Beverly's moral duty does not straightforwardly dictate that others have a legal duty to exempt her.

Awareness of Our Propensity to Deceive Ourselves

A professional asserting a right of conscience to be exempt from having to perform some task she is ordinarily expected to do must assume that her beliefs are true and defensible. This assumption is cognitively hasty¹³ and morally perilous. Beverly should acknowledge that neither she nor anyone else can be *certain* that her belief that she should not do X is true;¹⁴ the best she can do is critically evaluate her beliefs to increase the probability that she acts appropriately. A sincere belief does not a reasonable decision make. History is replete with instances where people followed their consciences *and* their orders in doing morally outrageous actions: for example, Virginia court clerks who refused to issue marriage licenses to interracial couples (see *Loving v. Virginia*¹⁵); bounty hunters who tracked escaped slaves and returned them to their "owners"; men who denied women the right to vote for more than half of U.S. history. This is not a problem to which I am immune. I grew up *sincerely* and *conscientiously* thinking that I should not use the same bathroom or water fountain as an African American (and that is not what I called them). My sincere belief didn't make it so. Neither did the sincere beliefs of 1850s bounty hunters, 1900s men, or 1960s Virginia court clerks.

This should be a crucial lesson to those claiming such a right: conscience, especially when construed as a private inner voice, is not always—and perhaps not often—a reliable moral guide. Knowing this, Beverly should carefully scrutinize her beliefs before acting on them, especially if—as is commonly the case—her actions at least inconvenience, usually disrespect, and often harm those she pledged to serve. She should know that her beliefs arise from multiple sources, many of which are notoriously unreliable. This ought to make Beverly morally cautious. If she knew—or even suspected—that her belief arose from brainwashing, she should want to be deprogrammed, not to act on that belief. That would be so even had she been brainwashed to believe the truth. She should likewise be concerned that she may be parroting the beliefs of (and the proffered "justifications" by) parents, teachers, friends, social media, or her favorite social commentator.

She has no reason to act on beliefs so based. Unfortunately, Beverly (like most of us) often cannot spot her erroneous beliefs,^{16,17,18,19} at least not without feedback from, and critical scrutiny by, others.

Of course no one that holds the belief that she should not do X thinks that her belief is a mere product of brainwashing, parental instruction, or misinformation. She will think, usually sincerely, that it is an all-things-considered true belief. However, a thoughtful person recognizes that all of us sometimes embrace beliefs for epistemologically flimsy reasons. We forget or ignore John Stuart Mill's sage advice: although each of us recognizes an abstract propensity to err,

unfortunately for the good sense of mankind, the fact of their fallibility is far from carrying the weight in their practical judgment which is always allowed to it in theory; for while everyone well knows himself to be fallible, few think it necessary to take any precautions against their own fallibility, or admit the supposition that any opinion of which they feel very certain may be one of the examples of the error to which they acknowledge themselves to be liable.²⁰

In short, I think that a professional errs if she decides what to do without carefully considering the previously adduced reasons for why she should do what is professionally required. Especially since, in instances where advocates most commonly assert a right to be exempt, professionals feel social pressure to refuse to do X. Those professionals who do *not* refuse may well be scorned by their ministers, priests, or fellow parishioners. In short, *refusing to refuse* will cost them; if they have an unqualified right of conscience, refusing to do X costs them nothing—although it often costs their clients a great deal.

However, it is important to reiterate that these arguments do not establish that a professional should always do what she is expected to do. When I was a journalist, I was told to write a story that I thought exploited people whose family members were killed in tragic accidents. I thought doing so was immoral; it clashed with my understanding of what it was for me to be a caring human being. Nonetheless, out of self-interest, I initially relented. Finally, I decided I could not do it again. Next time I was asked I refused, although I thought that my refusal would cost me my job. It never crossed my mind that I should have been able to refuse without explanation and with impunity.

Then, during the height of the Vietnam War, Congress enacted a special tax on telephone bills to support the war. Because I thought the war was immoral, I refused to pay that portion of the phone bill. I thought in paying the tax I was complicit in murder. Of course, I might have been wrong. However, given that I thought carefully about both choices, then it was incumbent on me to act accordingly. That said, it never crossed my mind that I should have been able to refuse without explanation and with impunity. Why do those now claiming a right of conscience expect more?

How Should Others React to These Claimants?

I do not think that there is a single reaction the public should always have to those claiming a right to be exempt. Laws permitting conscientious objection to participating in war are well entrenched and generally accepted in common morality. There are several reasons why this case is unique. First, (most) claimants did not

volunteer for the army; they were conscripted. Second, it is arduous to obtain conscientious objector status. Third, successful applicants are required to do demanding alternative service *and* to lose significant benefits given to veterans. This demonstrably differentiates this case from that of people currently asserting an unqualified right of conscience.

A Range of Reactions

Let's begin by identifying a range of reactions we might have to someone who wants to be exempt from fulfilling some standard professional duty. I focus on circumstances in which we might *honor* the claimant's decision, cases where we think her refusal exhibits a moral integrity generally guiding her behavior. In these cases, we would morally explore ways to let her avoid doing what she deems morally repugnant, even if, in the end, we cannot legally accommodate her. Before discussing the conditions under which we might honor a claimant and her decision, I want to distinguish that reaction from three related, but somewhat different, ones: *enduring*, *tolerating*, or *respecting* her and her behavior. The distinctions I have in mind are not fine-grained philosophical ones. Rather, they are meant to capture in ordinary language a continuum reflecting ways we might conceptualize and relate to someone's competing moral vision.

To endure someone else's behavior suggests not only that we dislike it but that we think it is profoundly wrong; we might even wish that we were able to suppress it. Nonetheless, for moral or practical reasons we do not take direct action to suppress it, and perhaps not even to criticize it. In contrast, if we tolerate someone's views, we tend to be more accepting of them. We do not even consider repressing or punishing her. If we respect the claimant's views or behavior, we view them still more favorably. This notion captures two different (albeit overlapping) moral strands. We can respect the person or we can respect her behavior. To respect a person captures the Kantian ideal of treating the other as an end in herself. If we also respect that person's behavior, we do not *merely* tolerate it; we see it as the expression of a morally serious person. For these reasons we hold the person and her behavior in some regard, even if we think it is mistaken. We can take any of these stances toward someone without being in the least inclined to exempt her from her responsibilities. What about honoring a person and her choice?

Four Criteria

I propose four criteria for when we might morally honor someone and her choices, even if they are still insufficient to justify legally exempting her. The first three resemble the factors Beverly should consider when deciding whether to refuse to do X: (1) She is willing to explain her view and why she holds it. (2) The explanation reveals that she has sensible reasons for her view, even if we do not find them convincing. That is, they are the *kind* of reasons that might be compelling, even if we think she has misapplied them. (3) The explanation reveals that she is self-critical.

Why do these give us some reason for honoring the person? They show that (a) she has thought about her choice, (b) she understands the need to not just have a view but be able to articulate and defend it, (c) she is morally humble—she realizes she might be mistaken and so is willing to subject her view to criticism—and (d) she treats the rest of us with the respect she expects from us.

There is one additional criterion. The individual asserting such a right will seek ways to compensate for her failure to fulfill this fiduciary duty, and, thus, the ways in which her actions burden her patients, clients, or coworkers. If she expects others to accommodate her, then she should be willing to make some efforts to make up for the ways she inconveniences them. That is why conscientious objectors to war do alternative service in lieu of serving in the military.

Mark Wicclair argues that any analogy with alternative service is misguided because the purpose of alternative service is to compensate for the fact that the objector is being excused from a dangerous activity.²¹ I think Wicclair misunderstands the rationale for alternative service. Because, even during wartime, most soldiers never see combat, the “dangerous activity” isn’t all that dangerous. Moreover, most people find available alternative service (working as an orderly in an emergency room) extremely unpalatable. Additionally, whereas soldiers garner significant veteran’s benefits (to attend university, some health coverage, etc.), conscientious objectors get diddly. Consequently, people are disinclined to claim conscientious objector status unless they really think war is wrong, sufficiently so that they are willing to suffer for their decision. Therefore, I doubt whether the principal rationale is what Wicclair claims.

The requirement for alternative service is more plausibly explained thusly: the conscientious objector to war knows that by acting on her conscience she is not doing something others think she ought to do. Although she believes that others are mistaken, she knows that by being exempt she burdens others who are drafted. By assuming additional responsibilities, she demonstrates her respect for fellow citizens. If others respect her by providing this alternative, she wants to respect them by providing a valuable service to society. Finally, by willingly assuming these tasks, without the promise of reward that soldiers attain by default, she demonstrates her sincerity; she shows that her moral misgivings to war are one of her core moral values.²²

I propose that unless the claimant meets all these criteria, she indicates that she is using conscientious refusal as a circuitous way to avoid or undercut the law, she is concerned only about keeping her own hands morally clean, or she wants to maintain her standing within her political or religious community—never mind the effects on others. She thereby demonstrates moral indifference to, or even disdain for, her patients or clients, as well as the public.

Meeting these criteria gives us some reason to honor her, even if not enough to exempt her from some professional duties.

Policy Choices

I have offered reasons why Beverly should *generally* do what she is expected to do, and, when she chooses not to do so, why she should willingly accept whatever negative consequences come. I have also explained why I think the rest of us should rarely exempt healthcare professionals, and certainly that we should not exempt them *carte blanche*.

I think there are compelling policy considerations bolstering these arguments, arguments why we must emphatically and univocally reject absolutist conscience claims and good reasons why we should also reject standard compromises.

The problems come into focus once we acknowledge what an absolutist right of conscience entails. First, I cannot imagine a remotely compelling reason why this

exemption should be limited, as it (mostly) is, to two narrow classes of medical health professionals: those whose work concerns women's reproduction (abortion, contraception, and the use of fetal stem cells) and those related to requests for physician-assisted suicide. It might happen that a majority of claims would come from these particular professionals. However, to the degree that that is true, I suspect it is an artifact of our cultural milieu. Second, having expanded the recognition of conscience claims to all medical professionals, I see no reason why it should be limited to just healthcare professionals. It is not as if these are the only people who find some of their professional duties morally distasteful.²³ Third, having extended the recognition of such rights to all professions, I see no reason why it should not be available to most employees, whether in a profession, retail sales, or the service industry. Although the issue will likely not often arise for some workers—say, ditch diggers—I see no reason to think that many workers will not find some of their responsibilities (putting out a fire at the local Islamic mosque or abortion clinic, teaching evolution to a high school biology class, repossessing someone's house, guarding a notorious mass murderer, etc.) morally objectionable. Fourth, if people can claim these exemptions as employees, why is the same right not available to ordinary citizens? Why shouldn't we exempt those who think paying taxes to finance war or bailing out failed banks or funding Planned Parenthood is morally objectionable?

Of course, granting an absolutist right to all workers and citizens is neither morally defensible nor practically implementable. Lots of people embrace moral views that a majority of others find decidedly peculiar. They would be aghast at the idea that Fred could decide exactly what work he would and would not do based on his particular moral sensibilities—especially if *they* were inconvenienced or harmed. Not only would most people—including those who now vehemently assert these claims of conscience²⁴—be appalled at such assertions, society simply could not function if everyone could be exempt from any assigned duties simply by asserting that he or she is conscientiously opposed to fulfilling them. I think this point is so obvious that I do not need to spell out the gory details.

A compromise right²⁵ would fare little better. A compromise right standardly involves three elements: (1) Even if a physician will not perform a procedure or dispense a drug himself, he is expected to let patients know such procedures and drugs are available and then direct patients to a professional who will perform that procedure or prescribe that drug. (2) Wicclair advocates that we should have "substantive criteria" (likely akin to those for conscientious objectors to war) to discern if the professional is serious and consistent and if the activity from which she wishes to be exempt clashes with one of the professional's core values.²⁶ (3) In cases where there are no other options, the physician will have to do what he finds morally distasteful.²⁷

I understand the spirit of compromise that prompts Brock, Wicclair, and others to proffer these proposals. However, their plans face multiple problems. Most current claimants of a right to conscience will not find their proposals acceptable.²⁸ These claimants think that if it is wrong to perform an abortion, then it is also wrong to tell patients *that* and *where* they can obtain one.²⁹ Doubtless, too, they would find Wicclair's substantive vetting process demeaning. Moreover, it is unclear that the review process could be as demanding as it must be to ensure that claimants are sincere.³⁰ Establishing a rigorous process would be bureaucratically

cumbersome and likely impossible. Suppose, though, that we could construct such a process. Then some applicants would be denied exemptions. We would then be where we are now: some people will insist that their moral consciences have been trashed. The only way to avoid *this* complaint is to have a milquetoast approval process that rejects only flagrant charlatans.

I propose that this talk about a “right of conscience” leads us down the wrong moral road. We should instead think and talk about accommodation without rights.

Accommodation without Rights

What is most contentious is these professionals’ assertion that they have a (legal) *right* to be exempt from some professional duties *simply* by proclaiming that they conscientiously object to performing them. Their assertion is even more implausible since they expect to be exempt with impunity. I have explained why these claims are indefensible.

However, suppose these people *asked* for an exemption, explained their rationale, and offered to find ways to make up for their failure to perform some required service. There is a world of moral difference between demanding an exemption by right and asking for a moral courtesy. Were we to reject claims of right while considering accommodation without rights, the number of professionals making requests will likely diminish. What is becoming an unwieldy problem would largely vanish. If a few professionals only rarely make such requests, the rest of us could consider accommodating them, even if we are not required to do so—as long as in doing so we do not establish (or be construed as establishing) legally binding precedents.

Of course, it is always open for those who make these claims of conscience to refuse and face the consequences. For people who choose this option, I have some admiration, even if I also think that they are profoundly wrong.

Conclusion

I am not claiming that people should never refuse to do what they are expected to do—anything but. I think it probably should happen more often than it does, albeit not primarily in the cases when it now happens. We need people with moral gumption who are willing to suffer for what they deem right. That’s not what advocates want or expect. When people now assert this right, most are granted an exemption without conditions. Making the claim in the current milieu requires neither thought nor courage.

What I am saying is that those claiming these rights begin by asking one question: “What should I personally do?” without the slightest recognition that the answer to *that* question has little or nothing to do with what the rest of us should exempt them from doing. It certainly does not mean they have a right to be so exempt. The right cannot be generalized—and, indeed, most of these claimants would be aghast if others used the same reasoning to deny them some service they want and expect. They do not seriously entertain what our world would look like if their claims of a right to conscience were universalized. It would be an ugly and unmanageable world where, among other things, women will continue to be disadvantaged and harmed.

Notes

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