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A THOMISTIC ARGUMENT FOR RESPECTING CONSCIENTIOUS REFUSALS

– Michał Głowala –

Abstract. The paper presents an argument for respecting conscientious refusals based on the Thomistic account of conscience; the argument does not employ the notion of right. The main idea is that acting against one's conscience necessarily makes the action objectively wrong and performed in bad faith, and expecting someone to act against his or her conscience is incompatible with requiring him or her to act in good faith. In light of this idea I also examine the issue of obligations imposed on objectors as well as the claims that conscientious objectors should change their profession.

Keywords: conscientious objection, conscience clauses, conscience, Aquinas, obligation to follow one's conscience, patient's rights, acting in good faith, acting in bad faith.

In the paper I sketch an argument for exempting from a legal obligation to perform an action a person who conscientiously refuses to perform it; in this sense I offer an argument for respecting conscientious objection. The argument does not employ the notion of right; since most of the contemporary debate on conscientious objection is framed in terms of protection and limitation of the objector's right to moral integrity or freedom of conscience, it seems that the argument offered here may shed some new light on the issue of conscientious objection.¹

The argument is based on Aquinas's account of conscience. It is sometimes pointed out that in the debate on conscientious objection too little attention is paid to the very issue of what conscience is,² although it is clear that one might refuse to perform an action not only on conscientious grounds.³ Moreover, it has been pointed out that the standard contemporary account of the conscientious objection of Thomas More may in fact be very far from the (Thomistic) account of con-

¹ Thus, I do not focus precisely on conscience clauses as legal norms, but rather on the issue of reasonableness and justification of exempting objectors from an obligation to perform actions they conscientiously object to. For an overview of the former issue see e.g. Galewicz [2012]; Saporiti [2015].

² Sulmasy [2008]; Hardt [2008].

³ For an overview of these see Wicclair [2014].

science that More himself endorsed.⁴ Finally, it seems that the differences in the account of conscience may be relevant for the debate about conscientious objection.⁵ For all of these reasons the Thomistic account of conscience seems relevant for the contemporary debate.

I focus on conscientious objection by medical professionals (doctors, nurses and pharmacists) as opposed to, for example, the general or selective conscientious objection to fighting in a war. Moreover, I focus on conscientious refusals, that is, on cases when one objects to doing something s/he is *prima facie* legally obliged to do (as opposed to, for example, cases when one's conscience prompts one or allows one to do something that is *prima facie* against the law).⁶

I proceed in four steps: first I present two Aquinas' theses on conscience that are relevant to the issue of conscientious objection (1); then I sketch the argument for respecting conscientious objection (2) and in light of the argument I discuss two issues at stake in the contemporary debate: the issue of obligations imposed on conscientious objectors (3), and the issue of relationships between conscientious objection and professional duties (4).

1. Two Theses on Conscience

According to Aquinas, conscience is an application of some general knowledge to a particular action (*applicatio scientiae ad aliquid*), yielding a judgement about this action. The judgement may concern either the issue whether the action takes (took) place, or the issue of moral value of the action; here I focus on the latter. Moreover, the latter form of judgement may concern either the action one is going to perform, or some performed action; here I focus on the former.⁷ The judgment of conscience may be true or false; if it is false, the error may be culpable or not.

The key point is that the sort of judgement of conscience that I focus on is not just a theoretical *ex post* evaluation of the past action: the moral quality of the action depends to some extent on what the agent's judgement of conscience is. This dependence is characterized more precisely by the two theses of Aquinas, (I) and (II):

⁴ See Kenny [1983] p. 93–97; McCabe [1986] p. 420–421; Finnis [2011] p. 169–171.

⁵ Murphy [2009] p. 3.

⁶ From a broader perspective, Tollefsen ([2009] p. 104) distinguishes, in a very illuminating way, six radically different forms of infringements of conscience by the law: stifling, burdening, violation by prohibition, violation by command, discrimination and appropriation. In a similar vein, Murphy and Genuis [2013] distinguish perfective and preservative freedom of conscience.

⁷ Aquinas [1980] *De veritate*, q. 17, art. 1, corp.

(I) The judgement of conscience binds (even if it is false).

The binding (*ligatio*) here consists precisely in the fact that it is wrong to act against one's judgement of conscience (although this does not imply that if one acts in accordance with the judgement of conscience the action is *eo ipso* good)⁸. In other words, the very fact that one does what one takes to be morally wrong, makes the action objectively morally wrong (and not only wrong for him or her, or from his or her perspective). So (I) may be rephrased as

(I*) Acting in accordance with one's conscience is a necessary condition of morally good conduct.

Of course one may change one's judgement of conscience; this, as Dougherty rightly stresses, is not "the abandonment of moral evaluation and discernment."⁹ Moreover, one may "have reason to judge that another man's moral counsel is more reliable than his own unaided conscience,"¹⁰ and formulate one's own judgement of conscience according to that counsel. Finally, in the case of false judgements of conscience typically one is obliged to change one's mind provided that the error is culpable. So what (I*) asserts is precisely that as long as one holds a given judgement of conscience, acting against it is wrong.¹¹

In the case of false judgements of conscience the obligation is grounded in the fact that the agent happens to hold a false moral belief; and since s/he is typically obliged to reject it, the ground for obligation is relatively weak. In the case of true judgements of conscience, by contrast, the obligation is grounded in some truth, and the agent is obliged not to reject the true judgement, so the obligation has a stronger sense.¹²

The other thesis of Aquinas is that

(II) Falsity of the judgement of conscience does not provide an excuse unless the error is not culpable.

In other words, if you follow your conscience and the judgement of conscience happens to be false in such a way that the error is culpable, the action is

⁸ Aquinas [1980] *De veritate* q. 17, art. 4: "secundum hoc enim ligare conscientia dicitur, quod aliquis, nisi conscientiam impleat, peccatum incurrit; non autem hoc modo quod aliquis implens recte faciat"; similarly *S. th.* I-II, q. 19, art. 5 and *Quodlibet* 3, q. 12, art. 2.

⁹ Dougherty [2011] p. 155.

¹⁰ Anscombe [1962] p. 183.

¹¹ Aquinas [1980] *De veritate* q. 17, art. 4: "quamvis igitur talis conscientia, quae est erronea, deponi possit; nihilominus tamen dum manet, obligativa est, quia transgressor ipsius peccatum de necessitate incurrit".

¹² *Ibidem*.

morally wrong in spite of being performed in accordance with your conscience. (The error of conscience may be culpable either because one has neglected something s/he should have done to arrive at a sound judgement of conscience, or because one has done something not to have a sound judgement of conscience).¹³ The very fact that you take what you do to be morally good does not make the action morally good. So (II) may be rephrased as

(II*) Acting in accordance with one's conscience is not a sufficient condition of morally good conduct.

It follows from (I) and (II) that in case of a culpable error of conscience both following the conscience and acting against it are morally wrong (although for different reasons).¹⁴ The only way out, Aquinas says, is to reject the culpable error of conscience.¹⁵

The theses (I*) and (II*) may be compared to the traditional conditions for a valid contract or consent. On the one hand, fraud vitiates consent; if you think that you are not signing a given contract, then in fact you are not signing it. On the other hand, you may think that you are signing a contract while in fact you are not (because, say, other legal conditions are not met). So thinking that you are signing a given contract is a necessary, but not a sufficient condition of signing that contract. Similarly, thinking that what you are doing is morally good is a necessary, but not a sufficient condition of a morally good action.¹⁶

What is peculiar about conscience from this perspective is precisely that the moral quality of the action does actually depend, but only to some extent, on what the judgement of conscience of the agent about the action is. From this point of view, we may contrast the judgement of conscience with, say, the judgements concerning spelling correctness. If you think that you are making a spelling mistake, that does not necessarily mean that you are actually making one (and, of course, if you think that you are spelling a word correctly, it does not necessarily mean that you are spelling it correctly). So thinking that you are spelling a word correctly is neither a necessary nor a sufficient condition of a correct spelling. On the other hand, the judgement of conscience may be contrasted with some peculiar sorts of an agent's judgements about action; it seems, for example, that if you seriously

¹³ Aquinas [1980] *S. th.* I-II, q. 19, art. 6.

¹⁴ For a discussion of the state of perplexity due to conscience error as a sort of moral dilemma see Dougherty [2011] p. 112-167.

¹⁵ Aquinas [1980] *De veritate*, q. 17, art. 4, ad 8; *S. th.* I-II, q. 19, art. 6, ad 3; *Quodl.* 3, q. 12, art. 2, ad 2.

¹⁶ For an excellent analysis of the connections between "fraud vitiates consent" maxim and action theory see Anscombe [1963].

think you are joking, then in fact you are joking (although it may be a bad joke); and if you think that you are not joking, then in fact you are not joking. So thinking that you are (not) joking is both sufficient and necessary condition for (not) joking.

From a more general perspective of action theory: what one's action actually is depends to some extent of what one thinks it is; and there is some sort and extent of dependence particular to conscience judgements about actions. It seems that this aspect of conscience is neglected in the debate on conscientious objection – although, as I am going to show, it is crucial for grasping the reasons for respecting conscientious objections.

Now if we think about judgements of conscience as some sort of deeply held personal beliefs concerning one's core values, then we are likely to miss precisely the extent to which the very nature of what one does depends on what one conscientiously thinks one does. On the one hand, we may think of conscience as integral to the agent's self-conception, and then we may be inclined to think that it actually makes his or her actions what s/he takes them to be; in particular, we may use conscience as “the great liberator to which one appeals against any restrictive moral precept”. On the other hand, we may think that the actions have some professional or objective aspect which is relevant for the others, whereas the conscience is just “a barometer of moral distress”¹⁷. The great advantage of Aquinas' account of conscience, I think, is precisely that it makes clear the extent to which what the action actually is depends on what the agent conscientiously judges it to be.

2. An Argument for Respecting Conscientious Refusals

From this perspective the following argument suggests itself: if an agent seriously thinks a given action is morally wrong, then the action performed by him or her will in fact be morally wrong (and not only wrong for him or her, or from his or her perspective); even if, contrary to his or her belief, there were nothing objectionable in the action itself, s/he could perform it only in bad faith, so his or her performance would be morally wrong. Now even apart from the respect for the agent's moral integrity there are, at least in some key cases, very good (if not compelling) reasons for not imposing a legal obligation to perform some action on an agent who could perform it only in bad faith or whose performance of that ac-

¹⁷ The concepts of conscience as “the great liberator” and as “a barometer of moral distress” are sketched briefly in Murphy [2009]; both of them are contrasted with the traditional account of conscience.

tion would certainly be morally wrong. It is particularly clear in cases when we require the agent to act in good faith, because requiring someone to act in good faith is incompatible with expecting him or her to act against his or her conscience. In such cases the agent who conscientiously refuses to perform the action could be considered as objectively unable to perform it.

A similar line of argument is presented by Tollefsen.¹⁸ He argues that commanding someone to do precisely what s/he takes to be intrinsically morally impermissible (and henceforth impermissible in *any* situation whatsoever) is itself morally impermissible, because “it involves willing that another morally do wrong”. What I would add here is that it is not only immoral in itself, but also incompatible with requiring people to act in good faith; and this requirement is in many areas indispensable. (Although it is by no means hard to imagine that, as a matter of fact, a political authority aims precisely at people’s wrongdoing. As Tollefsen remarks, “tyrannical governments have always tried to ensnare citizens in wrongdoing”).¹⁹

A more detailed version of this argument may be offered in core medical cases of conscientious objection. If dr. C finds abortion morally impermissible (as intentionally killing an innocent human or simply as a murder), he takes it to be a grave evil both to the unborn baby and to his mother; and he does not think the very wish of the mother or of someone else is enough to warrant that the killing would not be a grave evil (perhaps he thinks that it is, like murder, an example of an intrinsically evil act (*malum ex genere*) that is impermissible in any circumstances²⁰). So if he were to provide abortion, he would have to do what he seriously takes to be a grave evil both to the child and to his or her mother – so he should act in bad faith, intending to do a grave evil to his patients. Thus, if dr. C decides to provide abortion, he decides to do a grave evil to his patients. Now, even apart from concerns about the moral integrity of dr. C, there are good reasons not to oblige dr. C to do something that in his case would certainly involve the will to wrong his patients – just because such a will is clearly incompatible with the ethics of medical profession. The medical professionals should be required to act in good faith whatever they do, and dr. C should be considered unable to perform the action he can perform only in bad faith.

Let us compare this line of argument with a parallel one concerning a medical objection. Suppose that dr. M holds the belief (based on accessible evidence)

¹⁸ Tollefsen [2009] p. 108.

¹⁹ Ibidem, p. 106.

²⁰ For a sketch of the theory of intrinsically evil acts see e.g. Finnis [1991].

that, in the face of a decisive medical contraindication, a given form of treatment will be killing the patient. Now as long as he holds this belief, his decision to provide the treatment would be the decision to kill the patient; and it is reasonable not to expect him to make this decision, just because in his case it would be a decision to kill. Even if his belief happens to be false, it is still reasonable not to expect him to make the decision to provide the treatment as long as he holds that belief, because in his case it is incompatible with the ethics of his profession.

To sum up: acting against one's conscience makes one's action objectively wrong and incompatible with the rules of the medical profession; expecting medical professionals to act against conscience is incompatible with expecting them to act in good faith. So a medical professional who conscientiously holds that a given course of conduct is morally wrong, should be considered as objectively unable to perform it.

Before I proceed to some important differences between the medical and the conscientious refusals, it is worthwhile to consider an objection against the argument. The objection is that the intention or will with which a treatment is provided is negligible as long as dr. C and dr. M do precisely what we want them to do (or what the law obliges them to do). This objection amounts to saying that medical professionals should not be required to act in good faith, but rather to do precisely what they are told to do.²¹ I think the objection is unsound: for one thing, we cannot treat medical procedures as simple mechanical series of steps that are ordered by patients or managers, or by the law; the degree of complexity and uncertainty in medicine is so important that each medical procedure essentially involves a competent agent making decisions. So any ethical code of medical profession must recognize acting in good faith as a necessary (although not a sufficient) condition for good medical conduct.

It is sometimes argued that in the medical conduct the professional's personal moral convictions should give way to the concern for the patient's good; so, the argument goes, in the case of the conflict between the professional's conscience and the needs of his or her patients, the former's right to follow his or her con-

²¹ This sort of objection is closely related to the idea that procedures provided by medical professionals ("medical services") should be governed primarily by the law, the social conventions and the demands of patients; the rising popularity of the idea constitutes a significant shift in thinking about medicine (see e.g. Pellegrino [2002] p. 223–226; Biesaga [2005]; and Iglesias [2001] p. 22–25; Iglesias says: "the legalistic trend in medicine is also, in my view, a direct attack on the right use of practical wisdom, ... of that prudent judgement of the doctor on the spot, which medical practice requires" (ibidem, p. 24).

science must be limited (at least in some crucial cases).²² Some people suggest even that this sort of “sacrifice” of the professional’s own interests (as it is sometimes called) is part of the tradition of medicine. The problem with such an argument is precisely that one of the necessary conditions of the concern for the patient’s good is the professional’s conviction that what s/he does to the patient is not wrong to him or her. It is impossible to do what the agent seriously thinks is harming the patient for the sake of the good of the patient. The very concept of such a “sacrifice” is plainly inconsistent. It is precisely because of this that a medical professional cannot be expected to provide a treatment that s/he seriously considers a grave evil to his or her patient. You may try to convince the doctor that, contrary to his or her judgement, something is good for the patient; but you may not rationally expect that the doctor acts against his or her own judgement just for the sake of doing what is good for the patient. Similarly, one cannot argue that a juror is obliged to act against his or her conviction that something is unjust just for the sake of justice.²³

So the medical professional must demand that his or her serious judgements about what is (or is not) good for the patient be respected, just because acting in good faith is a necessary (although not a sufficient) condition for any good medical conduct and any real care about patients; and if s/he is required to act in good faith and to care for his or her patients, s/he must be allowed not to do something that at least s/he cannot do in good faith, just because s/he seriously thinks it is wrong. Such a demand on the part of a professional is not an expression of his or her selfish interests that may conflict with the patient’s ones. It is a claim for something that is necessary for the professional’s acting in good faith and for the care for the patient, and the professionals must be granted it if we are to require them to act in good faith and to care for their patients.

In an important sense it is part of the limitation of the medical resources in the world that the medical procedures are provided by professionals who must be required to act in good faith, and henceforth cannot be expected to act against their conscientious or medical judgements; in particular, their conscientious and medical judgements can make them unable (in an important sense) to perform the actions they seriously think are wrong from an ethical or medical point of view.

²² This seems to be the standpoint of The Bioethics Committee of the Presidium of the Polish Academy of Sciences [2013], point 18.

²³ This last sort of parallel is indicated by F.A. Curlin who says: “claiming that practitioners have an ethical obligation to dispense EC [emergency contraception], even if they have a conscientious objection, is like claiming that a jury has an ethical obligation to convict the defendant, even if they are persuaded the defendant is innocent” ([2007] p. 31).

Would it be morally permissible in any circumstances to force an agent to do what s/he seriously takes to be morally wrong, and in this way to require him or her to perform a morally wrong action? Tollefsen thinks it is impermissible whenever the agent thinks the action is *intrinsically* evil and henceforth evil in any circumstances.²⁴ In general, I think that two points are beyond doubt here. The first is that forcing someone to act against conscience is never a way to bring about moral good, for the action performed against conscience is always (even if the judgement of conscience happens to be false) objectively morally evil. The other is that this sort of evil is incompatible with the rules of medical profession, because medical professionals are required to act in good faith, caring for their patients, and acting against conscience is incompatible with that requirement; that settles the question of the permissibility of forcing medical professionals to act against conscience. The problem is whether in some other cases (especially when culpable errors of conscience occur) the moral wrongness of the action performed against conscience is only a side effect of the order to perform it; in such cases it might be permissible not to respect the agent's conscientious objection and to ignore the moral evil of the forced action.²⁵

Now let us turn to the issue of comparison between the conscientious objection and the medical one. (i) Note first that in both cases acting in accordance with judgement is a necessary (although not a sufficient) condition for medically or morally good conduct, and, more precisely, a necessary but not sufficient condition for acting in good faith. (ii) In both cases, when the judgement happens to be false, the error of the agent may be culpable or not. (iii) In both cases forming the judgement is a rational enterprise; in both cases one forms the judgement in light of some reasons, and the judgements may be challenged by some reasons (in particular, the conscientious objection is not grounded in any feeling); there is a possibility of greater disagreement on the matters of conscience than on medical matters between medical professionals, just because they are medical professionals.

(iv) It is sometimes said that in the case of the conscientious objection, as opposed to the medical one, the point of the objection is rather personal interest

²⁴ Tollefsen [2009] p. 108.

²⁵ The referee for *Diametros* has pointed out that the most serious problem posed by the line of argument presented here is whether it could be employed in some other cases of conscientious objection (e.g. of a person refusing to hire women because of the alleged immorality of making them work outside home). I think the point is that the forced action against conscience is always objectively morally wrong and the key issue is just whether that moral wrongness could be only a side effect of enforcing the action, an effect that could be neglected by one who compels the agent (in the case of medical professionals, as in the case of a jury mentioned above, it could not be neglected).

than something about the action itself. This, however, is mistaken if acting according to one's conscience is a necessary condition of morally good conduct.

(v) Suppose then that the medical judgement of dr. M happens to be false: contrary to his belief, providing the treatment would not be killing the patient. Suppose then that dr. M decides to provide the treatment (e.g. for some legal reasons or because he is paid for it), although he does not reject the judgement. Then his decision is the decision to kill the patient; yet, since his belief is false, his action is not killing the patient (at most it may be an attempt to kill the patient). The very fact that his decision would be a decision to kill the patient and that his action would be an attempt to kill the patient is, I think, a good reason not to expect dr. M to provide the treatment and to exempt him from the legal obligation to do it.²⁶ Yet it is also important that the action is not killing the patient.

Consider in turn the conscientious judgement. Suppose again that some of conscientious judgements of dr C. happen to be false: providing a given treatment would not in itself be harming the patient. Suppose moreover that dr. C decides to provide the treatment (for some legal reasons or because he is paid for it), although he does not reject the judgement. Then his decision is a decision to wrong the patient and the action is an attempt to wrong him. Again, this is a sufficient reason, I think, for not expecting dr. C to provide the treatment. Should we also say, like in the case of dr. M, that the action is not harming the patient, because the judgement happens to be false? I think it is at least arguable that the action is harming the patient in spite of the falsity of the judgement. It is clearly unfair to the patient to perform the action one thinks is harming him, and the intention of wrongdoing may be enough to make the action a case of wrongdoing.²⁷ If this is right, the reasons to respect the conscientious objection are in a way even stronger than the reasons to respect the medical one.

3. Conscientious Refusals and Patient's Rights

It is often argued that a medical professional may be exempted from the obligation to provide a treatment only if s/he meets some transfer-of-care require-

²⁶ It should be noted that there is a clear contrast between reckless conduct that creates serious danger but in fact does no harm and an attempt to cause harm that fails; the latter seems far more serious both from the moral and from the criminal point of view (see e.g. Nelkin and Rickless [2014] for a recent discussion of this issue).

²⁷ Aquinas maintains that a man believing mistakenly that he is killing his father, but killing in fact a deer, is guilty of a patricide; by contrast, a man believing mistakenly that he is killing a deer, but killing in fact his father, is not guilty of patricide, if only he provided due care not to cause harm (Aquinas [1980] *Quodl.* 3, q. 12, art. 4). This at least suggests that the former action *is* in fact a patricide.

ment (e.g. only if s/he refers the patient to another doctor who does not object to the treatment, or at least if s/he provides the patient with information concerning the possibilities of receiving the objected treatment; some authors opt for providing information only, some for referral). Moreover, sometimes it is implied that if there is no possibility of receiving the treatment elsewhere, there is no right to conscientious objection.²⁸ Imposing such an obligation is usually presented as necessary balancing the professionals' rights of conscience and the rights of patients to receive legal treatment. The main argument against this sort of balancing refers to the objector's complicity in evil actions: if one finds it unacceptable to provide a given kind of medical treatment, s/he will find it also seriously objectionable to refer the patient to another professional who does not find it objectionable. In response, some authors argue that although referring does in fact involve the objector in what is immoral, s/he cannot be granted the right to refuse referrals, because we cannot care so much about the moral integrity of the objector.²⁹ Other authors argue that the actions the objector should be obliged to perform do not make him or her complicit in moral evil (for example, that the objector cannot be obliged to refer, but s/he should be obliged to provide information, because the latter, as opposed to the former, does not make one complicit in the act one finds objectionable)³⁰. Below I make three points about these debates in light of the line of argument presented in section 2.

(i) The rights of patients. Some authors suggest that both in the case of the professional and the patient the relevant right is "a right to live by their personal moral values"³¹. The phrase "to live by one's personal moral values", however, is very general and might be misleading; it may mean either doing what conscience allows one to do, or doing what it dictates one to do, or not acting against one's conscience. Now, in light of the argument presented in section 2 there is some special reason not to require someone to act against his or her conscience; typically, however, it is the professional, and not the patient, that is sometimes required to act against his or her conscience. So the argument in section 2 reveals a relevant difference between reasons to respect the professional's and the patient's conscience.³²

²⁸ For some details of this issue see Galewicz [2012] p. 145–146.

²⁹ Brock [2008] p. 197–199.

³⁰ See e.g. Cavanaugh [2010] p. 198–200.

³¹ See e.g. May and Aulisio [2009] p. 35–37.

³² From a general perspective, the topic of patient's rights is very unclear. As Pellegrino remarks ([2002] p. 203) in the 20th century "the right to refuse care has rapidly metamorphosised into a right to demand and dictate the details of care". Moreover, it is unclear whether patient's rights to rece-

(ii) Complicity. Let us note first that it depends on the nature of the objection whether the objector should find the referral objectionable. For example, it is possible that (*) what one finds unacceptable is one's own participation in the treatment, and not the treatment as such (for example, one may be convinced that the risks of the treatment are so great that it would be immoral *for one* to undertake it, although it would not be immoral for any of highly skilled professionals). On the other hand, (**) if it is the treatment as such that is found unacceptable, it seems natural that the objector will also find the referral unacceptable; this is particularly clear if the objector takes the conduct to be an *intrinsically evil act* that cannot be justified by any circumstances, intentions or expected effects – for example, if s/he takes abortion or euthanasia to be a sort of murder.³³ Returning to the case of dr. M's medical objection, if dr. M thinks a given treatment would be killing the patient, it is natural that he will object to referring the patient to someone else who is ready to provide it. He could refer his patient only in bad faith. Something similar holds for conscientious objections.³⁴

In other words: one of the necessary conditions for referring the patient in good faith is the conviction that the relevant treatment is good for the patient; the crucial difference between (*) and (**) is that in the case of (**) the condition is not met.

(iii) Balancing the rights. Exempting medical professionals from their obligation is not favouring their rights and neglecting the rights of patients. To repeat, what we grant medical professionals is just a necessary (although not sufficient) condition for acting in good faith, and we must grant it to them if we are to require them to act in good faith.

ive some forms of treatment are claim-rights or liberty-rights in Hohfeld's sense (see e.g. Galewicz [2012] p. 138–141). Finally, there is no ethical justification for claiming a claim-right to e.g. abortion (see e.g. Pawlikowski [2012]).

³³ For a brief argument that referral involves complicity see Cavanaugh [2010] p. 199.

³⁴ At least in some cases the same holds for providing information. One may argue in general that the information itself is neutral and can be used by the patient in various ways; this is certainly true in some cases of providing information. But if the objecting professional is obliged to provide the information about available professionals that are willing to provide the contested treatment, there is no obvious variety of ways in which this information may be used by the patient; the question is rather whether it will be used at all or not. Moreover, providing *this* information seems to involve deliberation about “how to achieve the wrong to which one objects”, which, according to the criteria given by Cavanaugh, suggests that one becomes an accomplice to the act to which one objects.

4. Who should not be a doctor?

It is sometimes argued that one who demands not to be legally obliged to provide some medical treatment should just not enter the profession at all or find another job (here the contrast between military conscientious objection and the medical one becomes relevant). It is claimed, for example, that one who refuses to provide a legal abortion should not be a doctor at all. Savulescu is known for such a claim; in a similar vein Cantor opts for restoring “selfless professionalism” in medicine.³⁵ Savulescu does not seem to think that the very embracing of the judgements of conscience (or having some “personal values”) makes people unable to be doctors; it is rather treating these judgements seriously to the point of refusal of what is legally permitted that he finds unacceptable within the medical profession.

It is worthwhile to contrast this line of reasoning with the following one. (*) If someone seriously thinks that it is immoral to provide *any* sort of medical treatment, then, in light of the argument presented in section 2, he cannot provide *any* medical treatment in good faith. Then, since we rationally expect medical professionals to provide medical treatment in good faith, such a person should *not* become a doctor, as long as s/he embraces the judgement on medical treatment; in an important way s/he is *unable* to be a doctor as long as s/he embraces it. The argument (*) shows that within the account of conscience I present here some judgements of conscience can make one unable to practice as a professional of a given sort.

The point is, however, that there is a contrast between (*) and Savulescu’s line of reasoning (hereafter (S)).

(i) In (*) someone is deemed unable to become a doctor because s/he embraces some judgements, and we expect him or her to treat these judgements seriously and not act against them as long as s/he embraces them. By contrast, in (S) someone is deemed unable to become a doctor not because s/he embraces some judgements, but just because s/he treats them seriously and is not prepared to act against them.

(ii) In (*) a condition necessary for being a doctor is the ability to judge seriously that it is a good thing to engage in medical treatment in general. By contrast, in (S) a condition necessary for being a doctor is being prepared to act against one’s most serious convictions if they conflict with the law.

(iii) Thus it is implied by (S) that medical professionals should *not* be required to act in good faith; they are to be required to do what they are told to do.

³⁵ Savulescu [2006]; Cantor [2009].

By contrast, the key premise of (*) is that medical professionals should be required to act in good faith.

(iv) Finally, in (*) it is relevant for the argument what the nature of objection is precisely – what it is that the objecting agent finds objectionable; so there is, from the point of view of (*), an essential difference between an objection to abortion and an objection to medical treatment in general. By contrast, in the case of (S) the very nature of the objection is irrelevant, and there is no essential difference, from the point of view of the argument, between one who objects to abortion, one who objects to medical treatment in general, and one who objects to, say, providing resuscitation on Wednesdays.

This contrast shows, I think, serious pitfalls of (S); in particular, when we consider the ways of abusing the medical profession under the laws of totalitarian regimes,³⁶ we can see the reasons for not requiring doctors to do what they are legally obliged to without consulting their own conscience. Moreover, as Curlin points out, there can be no *moral* reasons for acting against conscience (although, we may add, there may be moral reasons for changing one's judgement of conscience); so when we opt for acting against conscience, we can only "tempt or threaten".³⁷ So I think that the line of argument (S), as opposed to (*), should be rejected.

Can the line of argument (*) be applied to the core medical cases of refusing, on conscientious grounds, to provide abortion or euthanasia? I think it cannot: in most cases the objectors claim that the procedures they find unacceptable are incompatible with the goals of medicine (that, for example, killing is not providing healthcare); and their claims can be substantiated by the long tradition of Hippocratic medicine.

5. Conclusions

To sum up: (i) My main goal was to provide an argument for respecting conscientious refusals that does not employ the notion of right. Two premises are fundamental for the argument: (a) acting in accordance with the judgement of conscience is a necessary, but not a sufficient condition of morally good conduct (the key thesis of Thomas Aquinas' theory of conscience); (b) medical professionals should be required to act in good faith. (ii) The argument undermines to some ex-

³⁶ See e.g. Pellegrino [1995, 1997].

³⁷ Curlin [2007]: "whatever reasons one might give for acting against conscience, they cannot be *moral* reasons, and to the extent such reasons are followed against the judgements of conscience, the possibility of medical ethics disappears. We can still tempt or threaten, but the carrot and the stick are instruments of control and enforcement."

tent the idea of balancing the rights of medical professionals and patients in cases of conscientious refusals. (iii) This suggests also that the analysis of conscientious refusals cannot be carried out exclusively in terms of rights. Finally, (iv) some prominent contemporary criticisms of conscientious refusals are based on the rejection of (b), but rejecting (b) yields an unacceptable conception of medical profession.

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