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## **The Truth Behind Conscientious Objection in Medicine**

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**Abstract:** Answers to the questions of what justifies conscientious objection in medicine in general and which specific objections should be respected have proven to be elusive. In this paper, I develop a new framework for conscientious objection in medicine that is based on the idea that conscience can express true moral claims. I draw on one of the historical roots, found in Adam Smith's impartial spectator account, of the idea that an agent's conscience can determine the correct moral norms, even if the agent's society has endorsed different norms. In particular, I argue that when a medical professional is reasoning from the standpoint of an impartial spectator, his or her claims of conscience are true, or at least approximate moral truth to the greatest degree possible for creatures like us, and should thus be respected. In addition to providing a justification for conscientious objection in medicine by appealing to the potential truth of the objection, the account advances the debate regarding the integrity and toleration justifications for conscientious objection, since the standard of the impartial spectator specifies the boundaries of legitimate appeals to moral integrity and toleration. The impartial spectator also provides a standpoint of shared deliberation and public reasons, from which a conscientious objector can make their case in terms that other people who adopt this standpoint can and should accept, thus offering a standard fitting to liberal democracies.

Keywords: Conscientious Objection; Philosophical Ethics; Ethics; Philosophy of Medicine; Moral Psychology

### 1. Introduction

Conscientious objection in medicine has become a topic of heated debate in recent years. On the one hand, studies have shown that many physicians in the USA believe they are not obligated to present patients with medical options to which they conscientiously object or to refer patients to a physician who does not object to the requested procedure<sup>1</sup> and that nearly half of medical students in the UK believe that doctors have the right to conscientiously object to *any* procedure.<sup>2</sup> Moreover, some professional organisations allow for some degree of conscientious objection by medical practitioners.<sup>3</sup> On the other hand, answers to the questions of what justifies conscientious objection in medicine in general and which specific objections should be respected have proven to be elusive. Consider an American gynaecologist who conscientiously objects to performing first trimester abortions in 2018: Is she justified in not performing early abortions? And what type of reasons should she provide when presenting her objection? How do we weigh her claim of conscience against her prima facie professional obligation to conduct such abortions? Now consider a German physician who conscientiously objects to performing experiments on Jewish prisoners in Auschwitz in 1942: Is this second case different in a normatively significant way from the first case? Is it the case that the German physician can object where the American physician cannot? Note that both of these actions, early-term abortions in the USA in 2018 and experimentation on Jewish prisoners in Auschwitz in 1942, are or were *legal* at those places at those dates.

My aim in this paper is to develop a new framework for conscientious objection in medicine that is based on the idea that conscience can express *true* moral claims. More specifically, I draw on one of the historical roots, found in Adam Smith's impartial spectator account, of the idea that an agent's conscience can determine the correct moral norms, even if the agent's society has

endorsed different norms. I proceed as follows. I first discuss the shortcoming of the integrity and tolerance approaches to justifying conscientious objection and diagnose a problematic assumption shared by both approaches, namely, that the *truth* of claims of conscience is irrelevant to their justification (section 2). I then develop an Adam Smithian account of conscience (section 3) and argue that when a medical professional is reasoning from the standpoint of an impartial spectator, his or her claims of conscience are true, or at least approximate moral truth to the greatest degree possible for creatures like us, and should thus be respected (section 4). I conclude by replying to potential objections to my account (section 5).

### **2. Integrity and tolerance: a critique**

While some authors have argued that conscientious objection should not be allowed in medicine,<sup>4 5</sup> others have argued that conscientious objection in medicine should be respected, either out of respect for the integrity of the conscientious objector<sup>3 6-8</sup> or because we should tolerate different moral points of view.<sup>9-14</sup> According to the former, the medical professional has core values that are integral to his or her identity, and when we ask the professional to do something that is incompatible with these values, we are asking him or her to perform an action that would lead to self-betrayal.<sup>3</sup> The latter includes diverse considerations. Sometimes an appeal to toleration of moral diversity is made on political grounds: if one assumes that liberal commitments include the 'principle of state neutrality' with respect to citizens' views about the good life, one could argue that this principle supports accommodation of conscientious objection, which would protect citizens' ability to live by their view of the good.<sup>9</sup> Indeed, the democratic state itself has an interest in promoting its citizens' capacity for moral reflection, and

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guaranteeing a right to freedom of conscience might be a good way to do so.<sup>10</sup> Sometimes an appeal to toleration is made based on the observation that people do, as a matter of fact, hold various moral views without sufficient common ground to adjudicate between them,<sup>11</sup> and sometimes it is made because of certain metaethical commitments, such as subjectivism or relativism, according to which others' views 'are neither less nor more justified than mine on objective ground, i.e., a ground that can be publicly shown to be true or false'.<sup>12</sup> Finally, toleration of refusals of conscience might be called for because something about the very nature of conscience demands respect for other people's claims of conscience. Daniel Sulmasy has argued that 'people of conscience owe each other [...] respect for their consciences', for 'without conscience, no morality is possible'. Therefore, 'to have a conscience is to commit oneself, no matter what one's self-identifying moral commitments, to respect for the conscience of others, [which] is tolerance'.<sup>13</sup> Relatedly, the realisation that one may be mistaken about one's moral judgments should lead one to 'epistemic moral humility, [which] is the true root of tolerance'.<sup>14</sup>

I wish to argue that both the integrity and tolerance approaches either fail as justifications for conscientious objection in medicine or at least require further defence. Let us start with integrity. People certainly cherish acting on beliefs central to their identity, but is this sufficient to ground conscientious objection when others—namely, patients—suffer from such objections? If one examines this question through a consequentialist lens, it is far from clear that the benefits attained by protecting medical professionals' integrity will outweigh the harms incurred by patients who do not receive the treatment in question. Indeed, the treatments to which medical professionals typically object, such as abortion and assistance in dying, are life-altering treatments for the patient.

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Alternatively, one could make the case that medical professionals' integrity has intrinsic worth. For example, Wicclair argues that 'moral integrity generally has intrinsic worth, because a world with people who have core moral beliefs that are associated with their self-conception and a disposition to act on them is a better world than one in which such characteristics are absent'.<sup>15</sup> However, the mere fact that a world in which people can retain their integrity is better than one in which they cannot retain their integrity does not yet show that integrity has intrinsic worth. A world with vanilla ice cream might be a better world than one without vanilla ice cream, but this does not yet show that vanilla ice cream has intrinsic worth. This does not mean that no argument can be provided that demonstrates that integrity has intrinsic worth: perhaps integrity's intrinsic worth is not to be understood in 'world-improving' terms, but rather in terms of its relations to moral personhood. Indeed, Brock notes that we should not force a person to violate her moral commitments because 'the maintenance of moral integrity is an important value, central to one's status as a moral person'.<sup>7</sup> However, surely not all forms of moral integrity have this connection to moral personhood. For example, Adolf Eichmann is reported to have followed the dictates of his conscience when implementing the final solution and used moral terms when defending his claims of conscience. However, if Eichmann claims that his moral integrity will be compromised if he does not execute the final solution, we would not want to say that not allowing him to do so threatens his status as a moral person. So what we need is a more *objective* understanding of morality, rather than morality as perceived by the agent in question, in order to forge the connection between moral integrity and moral personhood, and that is not provided in the literature on conscientious objection in medicine.

The toleration approach faces tougher challenges. First, using toleration as a political ideal does not justify conscientious objection in medicine, since even if it is the case that liberal

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democracies should allow their citizens to conscientiously object *qua individuals*, it does not follow that liberal democracies should allow medical professionals to conscientiously object *qua medical professionals*, who have special responsibilities that they do not have as citizens. Moreover, it is far from clear that the political argument suffices to demonstrate that conscientious objection should be permitted even for citizens *qua individuals*: liberal societies should allow their citizens to live according to their own conceptions of the good life, but this fact, in and of itself, does not entail that citizens have the right to refuse to act in accordance with state laws and regulations. Indeed, even if the democratic state has an interest in creating morally reflective citizens, it clearly also has an interest in its citizens adhering to its laws and regulations.

The other justifications from tolerance are no more successful. First, the mere *empirical* fact that multiple moral points of view exist does not entail the *normative* principle that one should respect these different points of view. Moreover, the normative principle of respecting different moral points of view does not, in and of itself, entail tolerance of conscientious objection. Second, endorsing subjectivism or relativism as the correct metaethical view also does not entail respect for different moral points of view or for conscientious objection, since such respect would need to be given a non-subjectivist/non-relativist defence: what normative force does the assertion of such respect by X have for Y, if what is normatively true for X is not necessarily normatively true for Y? Sulmasy's suggestion, according to which there is something about the nature of conscience that demands respect for others' claims of conscience, is more promising, but since Sulmasy argues that conscience merely expresses a *commitment* to acting morally,<sup>13</sup> it shares a version of the problem we encountered in connection with integrity: the commitment in question is subjective in the sense that the agent is committed to morality as *the*

*agent* understands morality—again, consider Eichmann claiming that he is committed to morality—and thus it is not clear why this is worthy of respect.<sup>i</sup> Moreover, talk of epistemic moral humility, without specifying legitimate boundaries to this humility, will also not justify conscientious objection: should an atheist in a liberal democracy be expected to accommodate a conscientious objection because of humility towards the potential truth of the religious beliefs underlying the objection?

The integrity and toleration approaches share a key assumption, which, I believe, is the source of their difficulties, namely, that the *truth* of claims of conscience is irrelevant to their justification. Proponents of the integrity approach downplay the role of the truth of conscience's claims, arguing that it is a 'perversion of the notion of conscience' to treat 'conscience itself as the standard of or source of right and wrong',<sup>6</sup> that an agent should not violate her moral commitments because of the value of moral integrity and 'not because those commitments must be true or justified'<sup>7</sup> and that an agent need not defend the truth of her claims of conscience.<sup>8</sup> And, of course, the toleration approach advocates toleration of different moral frameworks that do not necessarily contain true moral claims and does not offer a method for adjudicating between different moral claims. Indeed, as we saw, even Sulmasy argues that conscience merely expresses a commitment to acting morally.

However, downplaying the importance of the truth of claims of conscience leads to the problem at which I hinted in my discussion of both the integrity and toleration approaches to conscience: the problem of demarcating the realm of *legitimate* conscientious objection. The

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<sup>i</sup> In a later paper, Sulmasy argues that 'there is no point in having convictions, particularly religious ones, unless one believes them to be true. [...] However, one can hold that belief and also affirm, without contradiction, that one is not infallible [...] This is not relativism or subjectivism'.<sup>14</sup> However, without providing a non-subjectivist standard of correctness for one's beliefs, Sulmasy has not shown why his talk of commitment to morality goes beyond morality as the agent understands it. After all, even on a subjectivist account of moral judgment, an agent can both believe that her moral convictions are true and affirm that she is not infallible.

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reason we do not want to respect Eichmann's moral integrity or tolerate his claims of conscience is that we are convinced that Eichmann's conscience expresses false moral claims. This becomes even clearer when we contrast Eichmann with the German physician who conscientiously objects to performing experiments on Jewish prisoners: we would be happy to respect the latter's integrity or tolerate his objection because we are convinced that his conscience expresses true moral claims. However, note that this brings us to a second function of truth above and beyond the role it might play within the integrity and toleration approaches, namely, that an important aspect of conscientious objection is to allow individuals to resist the prevailing moral attitudes and laws because those attitudes or laws might be *wrong*. Thus, we applaud the German physician who objects to performing experiments on Jewish prisoners because we think the attitudes and laws at the time were wrong and that this physician is asserting a true moral claim. This way of thinking about conscience is also manifested in Gandhi's declaration that 'in matters of conscience, the law of majority has no place' and in Luther King's declaration that 'an individual who breaks a law that conscience tells him is unjust [...] is in reality expressing the highest respect for law'.<sup>ii</sup>

While integrity and toleration pertain to the question of *whether* conscientious objection in medicine is justified, two related but different questions are *which* conscientious objections are justified and how *individual* practitioners should justify their objections to others. In this regard, two criteria have been offered: (A) the *genuineness* of the practitioner's belief in the objection<sup>16</sup><sup>17</sup> and (B) the *reasonableness* of the objection.<sup>18-20</sup> Both of these criteria also face challenges. It is difficult for an individual practitioner to prove that his conscientious objection is genuine, for

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<sup>ii</sup> Some of these observations are taken from my paper 'Might There Be a Medical Conscience?',<sup>30</sup> although the potential truth of claims of conscience is generally not discussed in the medical ethics literature (McLeod is an exception<sup>31</sup>). Interestingly, Brock notes social consensus, the law, and public policy as elements that ought to constrain claims of conscience.<sup>7</sup> However, when issuing true claims, conscience should *challenge* these elements.

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whatever reasons he provides, one might always wonder whether he is lying and does not really hold the belief that providing the requested service is wrong. Indeed, even if he is not lying and he does believe that providing the requested service is wrong, he might be holding this belief for reasons other than the ones he consciously recognises (perhaps because of an unconscious prejudice).

Reasonableness does not fare better. Consider the integrity approach: it is difficult to convince others that one's moral beliefs, insofar as they merely pertain to the type of person one is, are reasonable, for what seems reasonable to A, given the type of person that A is, might seem unreasonable to B, given the type of person that B is. Now consider the toleration approach: medical professionals may be unable to convince others of the reasonableness of their objections, if those others have different moral points of view and are merely expected to tolerate points of view that differ from theirs. Robert Card has recently cashed out the reasonableness criterion in terms of the Rawlsian ideal of public reason, which 'justifies a set of rules for the governance of society that warrant endorsement by all citizens, no matter their religious or cultural affiliation', so that medical practitioners 'must not solely appeal to their personal, comprehensive doctrine to justify such refusals of care within the institutional structure of medicine but instead must appeal to public reasons'.<sup>20</sup> However, public reason will be of little use for advocates of the integrity approach, since this approach emphasises the objector's core values that are integral to his or her identity. Therefore, we would need to hear out individual medical professionals' own idiosyncratic reasons for their objections and assess whether their objections are genuine and/or reasonable for those reasons. Nevertheless, public reason might be pertinent for the toleration approach, since this approach is not primarily concerned with assessing the objector's integrity and thus his or her private reasons. However, without further guidance, it is very unlikely that

most medical professionals would be able to state their objections in terms of public reasons rather than in terms of their own idiosyncratic reasons.

### 3. An Adam Smithian account of conscience

What would it mean for some claims of conscience to be true and others false? Many of the authors in the medical ethics literature are following the lead of 20th century philosophers who downplayed the ability of conscience to issue true moral claims, given its inherently psychological nature.<sup>21-24</sup> There are good reasons to hold onto psychologistic conceptions of conscience. If conscience is supposed to be a faculty for detecting mind-independent moral truths, then we will encounter the well-known metaphysical, epistemological and practical problems associated with realism that makes this option unattractive.<sup>25-26</sup> Alternatively, if one opts for an antirealist Kantian conception, according to which the categorical imperative is the voice of conscience, a convincing developmental account of conscience would still need to be provided.<sup>iii</sup>

I wish to provide a different antirealist conception of conscience, one which, while psychologistic in nature, can nevertheless provide true moral claims. The account I will develop builds on the idea that it is the responses of agents *who are under certain conditions* that constitute what is morally right. In particular, an agent needs to be under certain conditions for his or her judgments of conscience to be true and thus to have the right kind of normative authority. Of course, the conditions in question cannot be defined in terms of agents getting the

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<sup>iii</sup> Velleman, who argues for the Kantian view,<sup>32</sup> weds Kant's Categorical Imperative to Freud's superego by developing an account in which, when the child internalises his parents, he internalises the Categorical Imperative.<sup>33</sup> I do not believe that this is a plausible developmental story, but I will not press this point in the current paper.

right results on pain of circularity. However, these conditions are required to guarantee that the agents' responses are in fact reliable, and one strategy is to *idealise* them via the postulation of an ideal observer whose reactions determine whether an ethical judgment is true or false. In other words, when one's conscience has taken the shape of such an idealised observer, one's claims of conscience are true and have the requisite normative authority. Of course, we do not want the ideal observer to be too ideal, for otherwise this observer will become detached from our human sensibilities, and it will become unclear what epistemic access we have to the reactions of such an observer or why his decisions should bind us or motivate us.<sup>iv</sup> Therefore, a *modestly* idealised observer is needed, one which is found in Adam Smith's impartial-spectator account in *The Theory of Moral Sentiments* (hereafter 'TMS')<sup>27</sup> and which will serve as the basis of my account of conscience. In particular, Smith's account specifies the hypothetical conditions that guarantee the reliability of an agent's claims of conscience. However, the hypothetical conditions are themselves constructed from the psychology and interactions of actual human beings. Indeed, Smith has a very plausible story to tell about the development of conscience.

Smith famously calls the standpoint of the impartial spectator 'conscience' (TMS III.3.4). It is a standpoint that is constructed from within a given society: 'There exists in the mind of every man, an idea of [exact propriety and perfection], gradually formed from his observations upon the character and conduct both of himself and of other people. It is the slow, gradual, and progressive work of the great demigod within the breast [the impartial spectator]' (TMS VI.iii.25). In other words, conscience is a social construct from the very start. In particular, Smith notes that it is part and parcel of human life that we judge others and find others judging us, that is, that people in human society *mirror* each other. This allows us to see ourselves

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<sup>iv</sup> Firth argued for an observer who is, among other things, omnipercipient and omniscient with respect to the non-ethical facts and that 'any plausible description of an ideal observer will be a partial description of God'.<sup>34</sup>

through the eyes of others by internalising the way in which others respond to us and thus to make judgments of propriety of our own sentiments (TMS III.1.3–5). However, this cannot be all: if conscience were merely a product of actual spectators, and thus of prevalent social attitudes, how could it ever progress *beyond* these attitudes? For why should we assume that the people whose reactions we internalise provide the *correct* standard of moral judgment? Smith was sensitive to the fact that agents in a society might come to realise that the actual spectators who judge them are biased, either because they are not informed about the non-normative facts or because they have a personal stake in the circumstances, and are thus unreliable sources for determining what is worthy of approval (TMS III.2.4–5). Smith provides an explanation for the interest we have in fully informed and unbiased approval in the form of a desire to be *worthy* of approval: we do not only desire praise and dread blame but come to desire to be *praise-worthy* and dread being *blame-worthy* (TMS III.2.1). Therefore, people will ultimately seek to go beyond the actual spectators they encounter and seek approval from an impartial spectator who is fully informed and has no personal stake in the circumstances and whose jurisdiction is founded ‘in the desire of praise-worthiness, and in the aversion to blame-worthiness’ (TMS III.2.32).

In seeking to go beyond the actual bystanders they encounter, agents in a human society use their *imagination* to create a well-informed and impartial bystander: ‘We endeavour to examine our own conduct as we imagine any other fair and impartial spectator would examine it’ (TMS III.1.2). In other words, the impartial spectator is oneself in the role of an *imagined* spectator and not in the role of the actual spectators that one happens to encounter. The creation of an imagined impartial spectator does not happen *ex nihilo*. First, when we sympathise with others, we imagine being in the situation we take the actor to be in (TMS I.i.1.2 and I.i.1.10). Therefore,

sympathising with others already makes us imagine either ourselves in the actor's situation or the actor himself in his situation (TMS I.i.1.10–13 and VII.iii.1.4). This allows us to develop our imaginative capacities and to appreciate different points of view. Second, when we repeatedly adopt the point of view of others regarding our conduct, we tend to become more impartial, since our passions as reflected by others are less forceful than our original passions (TMS I.i.4.8). Thus, the standpoint of the impartial spectator is constructed from our interactions with the people whom we judge and who judge us as well as from our experiences of their character and conduct: we use our imagination to build on these interactions in order to construct an image of a spectator who represents a well-informed and impartial point of view. Although the standpoint of the impartial spectator is constructed from our interactions with other agents, the end result is different from any one of these agents' points of view: this spectator is an imagined judge that we set 'between ourselves and those we live with', a person 'quite candid and equitable [...] who has no particular relation either to ourselves, or to those whose interests are affected by our conduct, [...] but is merely a man in general [...] the representative of mankind'.<sup>v</sup> Therefore, Smith concludes that it is only 'when the heart of every impartial spectator entirely sympathizes' with the 'passions of human nature' that these passions can be deemed 'proper' (TMS II.i.2.2).<sup>vi</sup>

The standard of the impartial spectator is the standard of a fully informed, impartial and *modestly* idealised spectator whose responses constitute the morally appropriate and inappropriate. And when taking this account one step further than Smith's original normative intentions, we can add that when one has adopted the standpoint of the impartial spectator as

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<sup>v</sup> This quote is taken from a passage which first appeared in the second edition of TMS, remained with minor variations in editions 3–5, and was replaced by a slightly different passage in the sixth edition (ie, TMS III.2.31–32).<sup>27</sup>

<sup>vi</sup> Smith writes as if most of us have in fact reached the stage of development in which our conscience has taken the form of an impartial spectator (see, for example, TMS III.3.4). While this may not be the case, what is important for our purposes is that most of us could adopt the standpoint of an impartial spectator.

one's conscience, the judgments of one's conscience are true moral judgments.<sup>vii</sup> This Smithian account of conscience can deal with the shortcomings discussed above. First, the account can provide the demarcation of the set of legitimate claims of conscience, namely, those claims that are made from the standpoint of an impartial spectator. In particular, Smith believed that adopting the standpoint of the impartial spectator, who views the situation from a neutral perspective, allows the spectator to humble his self-love (TMS II.ii.2.1). Moreover, this standpoint allows the spectator to correct his perception of his own interests (which are tied to his self-love) versus the interests of others (TMS III.3.1). The key idea here is quite simple: if we want to weigh the importance of our interests versus the importance of someone else's interests, '[w]e must view them, neither from our own place nor yet from his, neither with our own eyes nor yet with his, but from the place and with the eyes of a third person, who has no particular connexion with either, and who judges with impartiality between us' (TMS III.3.3). Therefore, although Eichmann claimed he was committed to morality, his conscience did not express a true moral claim when it told him to exterminate the Jews. This is so because such a claim would have been rejected by an impartial spectator who takes the interests of all parties involved into consideration. Second, normative claims made from the standpoint of an impartial spectator can trump prevailing moral attitudes and laws, if these attitudes and laws are deemed *incorrect* from this standpoint. In other words, the standard set by the impartial spectator, the standard of 'a man in general', can transcend the norms of the society that gave rise to it. Indeed, Smith explicitly notes that the standpoint of the impartial spectator can sometimes be used to *correct* the reactions

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<sup>vii</sup> Proponents of various forms of meta-ethical realism might maintain that my anti-realist position cannot really account for normative truth. However, there are various accounts of truth, some more minimal than others, in the philosophical literature. My aim in this paper is not to settle the meta-ethical dispute, but rather to build on the idea that it is the responses of agents *who are under certain conditions* that constitute what is morally right.

of actual people we encounter—actors as well as spectators reacting to actors—when these reactions are not deemed appropriate from this standpoint (TMS III.2.32 and VII.iii.3.9).

#### **4. The justification of conscientious objection in medicine**

How would this Adam Smithian account of conscience work when applied to conscientious objection in medicine? Consider first the German physician who conscientiously objects to performing experiments on Jewish prisoners in Auschwitz in 1942. His claim of conscience would be endorsed by an impartial spectator since, when taking into consideration the interests of all involved, such a spectator would not approve of human experiments, rendering them morally impermissible. Thus, we think that this physician's claim of conscience is true: despite the social consensus, the public policy and the law, this conscientious objector is getting things right where nearly everyone else is getting them wrong. In particular, his claim of conscience is justified, because it is a judgment made from the standpoint of an impartial spectator, the standpoint from which the morally appropriate and inappropriate are determined and should thus be respected. In this case, the judgment is also conclusively true, because an impartial spectator would endorse it.

However, what are we to make of more complicated cases, such as the American gynaecologist who conscientiously objects to performing even first trimester abortions? In this case, it is not entirely clear who all the relevant parties are, since it is not clear whether we should attribute personhood to fetuses. Thus, since we do not conclusively know whether abortions are morally permissible, an impartial spectator would invoke epistemic humility about their moral permissibility. I wish to argue that in this case, the physician's claim of conscience, although not conclusively true, is also justified, because it is a judgment made from the

standpoint of an impartial spectator and thus approximates moral truth to the greatest degree possible. It should, therefore, be respected. Note that the lack of clarity regarding the identity of relevant parties is not the only reason that the impartial spectator might not yield a conclusive verdict. Consider conscientious objections in which questions of personhood do not arise, for example, in cases of medical assistance in dying in which two persons are clearly involved. In such cases, the impartial spectator might also invoke epistemic humility about the action's moral permissibility because, when considering the interests of both parties, he might not reach a verdict regarding whether this is an instance of a *justified* killing. Once again, the physician's claim of conscience is justified, because it is a judgment made from the standpoint of an impartial spectator and thus approximates moral truth to the greatest degree possible.

I am arguing that a medical practitioner's conscientious objection is justified and should be respected if his claim of conscience is made from the standpoint of an impartial spectator and thus attains, or at least approximates to the best degree possible, moral truth.<sup>viii</sup> However, the results provided by this procedure might seem disappointing, since conscience yields a conclusive verdict only in so-called extreme cases: society has adopted norms that are obviously wrong—because they stem from Nazism, colonialism, racism and so on—and an individual's conscience, when she adopts the standpoint of the impartial spectator, can identify this wrongness. In cases of conscientious objections in medicine in liberal democracies, things are not so clear cut: the norms that society has adopted are not obviously wrong, and an individual's conscience, when he or she adopts the standpoint of the impartial spectator, cannot conclusively determine whether these norms are in fact wrong. However, my account advances the debate regarding conscientious objection in medicine in the following ways. First, it provides a novel

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<sup>viii</sup> I state this as a sufficient, but not necessary, condition, since I wish to leave open the possibility that other truth-based accounts of conscience—for example, those based on Kant's categorical imperative—are possible.

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justification for conscientious objection in medicine by appealing to the simple idea that a conscientiously objecting agent might be getting things right, while society is getting them wrong, and it does so by using a standard of correctness that we can all share and that is thus fitting to liberal democracies. Second, my account advances the debate regarding both the integrity and toleration approaches. For proponents of the integrity view, it offers a way of forging a connection between moral integrity and moral personhood: if moral personhood is constituted by the standpoint of the impartial spectator, then moral integrity should be respected insofar as it conforms to this standpoint. For proponents of Sulmasy's brand of the toleration view, my account provides an explanation for the claim that we should respect a claim of conscience because it demonstrates a commitment to morality: while each one of us might not see the normative force of a commitment to morality as a given agent understands morality, we can easily identify the normative force of a commitment to morality from the standpoint of the impartial spectator, since judgments made from this standpoint approximate moral truth to the greatest degree possible. Moreover, my account demarcates the legitimate boundaries of epistemic moral humility: it is not the case that we should demonstrate epistemic humility towards any normative judgment, but rather towards those judgments that are made from the standpoint from which moral truth is constituted but for which this standpoint did not provide a decisive answer.

My Smithian account of conscience can also advance the debate regarding conscientious objection in medicine by explaining how individual medical professionals ought to convince others that their conscientious objections are justified. In particular, I wish to argue that the *reasonableness* of a conscientious objection is a function of deliberation from the standpoint of an impartial spectator and not from the individual practitioner's own point of view. Recall that

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when discussing the genuineness and reasonableness criteria, I noted that it is difficult to convince others of the reasonability of one's moral views, if such views merely express the type of person one is or if such views are incommensurable. In contrast to approaches that maintain that each interlocutor remains in his or her own idiosyncratic standpoint and with his or her own private reasons, my Smithian account of conscience provides a standpoint from which *shared* deliberation is possible and *public* reasons are available: claims of conscience are reasonable insofar as they approximate moral truth as determined from the standpoint of an impartial spectator. Of course, Josef Mengele would not agree with the objecting German physician in the aforementioned example, and a physician who claims that abortions are morally impermissible might not agree with a physician who claims that they are morally permissible. However, the key question is whether they are making these claims from their own point of view or from the point of view of an impartial spectator. Thus, even in the abortion case, interlocutors with different views on abortion—perhaps because they differ about the question of whether fetuses are persons—could reason that if fetuses are persons, abortions are morally impermissible under conditions C and if fetuses are not persons, abortions are morally permissible under conditions C. Therefore, I agree in part with Card, who argues that individual medical professionals should use public reason in order to justify their objections. However, I argued that without further guidance, it is unlikely that most medical professionals would be able to state their objections in terms of public reasons rather than in terms of their own idiosyncratic reasons. My Smithian account of conscience can provide the requisite guidance: when medical practitioners provide the reasons for their objections they should state—and, indeed, should be trained to state—their reasons as those endorsed by an impartial spectator, which are the type of reasons that we can all share.

## 5. Objections and replies

I wish to conclude by addressing four objections that might be raised against my account. First, one could object that since I am arguing that conscientious objections are justified not as a function of the objector's own point of view but rather as a function of an impartial spectator's point of view, my account does away with the inherently *personal* aspect that conscience should possess.<sup>6</sup>In my reliance on the impartial spectator, I am indeed arguing for an impersonal conception of conscience. However, I believe that I have captured the inherently personal aspect of conscience in two important respects: (A) the conscientious objector does ultimately act on his or her own beliefs—he or she merely needs to check that an impartial spectator would either conclusively endorse them or find them acceptable on grounds of epistemic humility; (B) conscience, on my account, is intimately tied to one's actions in that the impartial spectator guides one's actions both in the normative sense of telling the agent what the agent ought to do and in the psychological sense of satisfying the agent's desire to be worthy of approval.

Second, one could argue that assessing the reasonableness of the conscientious objection is insufficient and that the genuineness of the objection should also be assessed. I have noted some of the difficulties inherent in the idea of individual medical practitioners trying to convince others that their objections are genuine. However, my emphasis on an impersonal conception of conscience provides proponents of the genuineness criterion a new way of thinking about the genuineness of the objection: rather than trying to ascertain whether the objector sincerely holds the idiosyncratic beliefs on which her objection is initially based, genuineness could be ascertained by determining whether the objector has in fact gone through the impartial spectator procedure. Indeed, on my Smithian account of conscience, a medical professional cannot be said to have formulated a legitimate conscientious objection unless they have made a good faith

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attempt to adopt the standpoint of an impartial spectator, and so we should only accept an appeal to conscience if we have reason to believe that the objector has made such an attempt. And it is much easier to ascertain whether the objector has made a good faith attempt at adopting the standpoint of an impartial spectator than to ascertain whether he sincerely holds his own idiosyncratic beliefs, since this is a standpoint that each one of us can adopt, and so each one of us can appreciate whether the objector is reasoning from this standpoint.

Third, one might argue that my Smithian account gives conscientious objectors too strong of a ground, particularly regarding legitimately not referring patients to non-objecting medical practitioners. For example, if we adopt the standpoint of the impartial spectator and conclude that the fetus might be a person, then abortion might be murder. This means that the conscientious objector to abortion has a strong moral case for refusing to refer, for if he were to refer, then he might be abetting an act of murder. However, the problem of referral is one that is shared by all positions that allow for conscientious objection in medicine. Consider, for example, the integrity approach and in particular X, who conscientiously objects to fulfilling Y's request to murder Z: it will be of little comfort to X to require of him that he refer Y to W, who can and will murder Z. After all, X would be assisting Y in what he takes to be an immoral action by serving as the means to the completion of that action. Thus, if X's acting against his belief that  $\phi$ -ing is wrong undermines X's integrity, then assisting someone else in  $\phi$ -ing would also undermine X's integrity. Therefore, it does not matter whether one endorses the relevance of the potential truth of the objection—and thus risks an objective form of complicity in the sense that the action might *in fact* be morally wrong—or the importance of the integrity of the objector—and thus risks a subjective form of complicity in the sense that the action is *believed* by the objector to be morally wrong: those who wish to allow for conscientious objection in medicine, protect

patients' autonomy and well-being, and avoid the complicity that is associated with requiring objecting practitioners to refer patients to non-objecting practitioners, will have to come up with a creative solution. While I cannot offer a comprehensive solution to this worry in the current paper, I believe that the solution lies in *not* requiring referral on the condition that: (A) conscientious objections by individual medical practitioners should be listed in an online database that is accessible to patients<sup>20</sup> and (B) there are enough non-objecting medical professionals in the relevant geographical area.<sup>28</sup>

Fourth, one might argue that my Smithian account gives conscientious objectors too weak of a ground, particularly regarding *religious* conscientious objections. I agree that an account that appeals to the authority of the impartial spectator and to reasons that we can all share is not conducive to justifications based on other normative authorities or to the existence of reasons that can only be shared by adherents of a certain religion. Of course, one could argue that there is in fact a distinction to be made between a religious conscience which, according to the Abrahamic religions, enables agents to know whether an act conforms to divine law, and a secular conscience, which does not appeal to divine law.<sup>29</sup> Since I worry that this bifurcation of conscience will require proponents of a religious conscience to endorse either the integrity or the toleration view, which, I have argued, are unsatisfactory as they currently stand, I wish to make the following observation: insofar as the religious conscientious objector's claim is moral in nature, he or she could justify it by appealing to the standpoint of the impartial spectator, instead of scripture or tradition. Indeed, note that the religious objections we tend to accept in medicine—for example, objections to performing abortions—could have been formulated as moral objections within the impartial spectator framework and those that we do not tend to accept—for example, objections to treating gay patients—could not have been thus formulated.

Now, one might still worry that since most conscientious objections are made on religious grounds, my Smithian account of conscience is not relevant for how conscientious objections in medicine are *actually* formulated. However, we are interested in the *justification* of conscientious objection in medicine, not a *description* of how conscientious objections in medicine are, as a matter of fact, put forward. Thus, it might be the case that current practices in regard to conscientious objection in medicine will need to be radically revised. Indeed, there is an important reason to reject religious claims as a basis for conscientious objection: conscientiously objecting medical practitioners are asking to be released from role-based duties that are defined by the law, and the way to justify such accommodations in a liberal society is by providing reasons that we can all share; and, as argued, such public reasons can be had by appealing to the standpoint of an impartial spectator.

### **6. Conclusion**

I have argued that conscientious objection in medicine is justified, at times, because conscience can express *true* moral claims. In particular, I have argued that when a medical professional's claims of conscience are made from the standpoint of an impartial spectator, these claims are true, or at least approximate moral truth to the greatest degree possible, and should thus be respected. This account provides a justification for conscientious objection in medicine by appealing to the idea that a conscientiously objecting agent might be getting things right, while society is getting them wrong, and it does so by using a standard of correctness that we can all share and that is thus fitting to liberal democracies. The account also advances the debate regarding the integrity and toleration approaches, since the standard of the impartial spectator specifies the boundaries of legitimate appeals both to moral integrity and to toleration of

objections based on a commitment to morality and epistemic moral humility. Moreover, the impartial spectator provides a standpoint of shared deliberation and public reasons, from which a conscientious objector can make their case in terms that other people who adopt this standpoint can and should accept. Of course, if the impartial spectator framework is to be applied in practice, revisions to current practices will be required, including teaching medical professionals how to reason from this standpoint. However, if the medical community is serious about allowing conscientious objection in medicine, then it should, I believe, be willing to implement these changes.

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