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"The truth behind conscientious objection in medicine: A reply to Clark, Emmerich, Minerva, and Saad"

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Steve Clarke, Nathan Emmerich, Francesca Minerva and Toni Saad have offered nuance and insightful commentaries on my paper 'The truth behind conscientious objection in medicine'.[1] I cannot, in this brief response, do justice to all of the objections and suggestions that they have raised. I have tried to focus my response on what I take to be my interlocutors' main concerns with my Smithian account, with the hope that we can continue the conversation elsewhere.

Clarke argues that both Smith and I 'underestimate the difficulties involved in overcoming the distorting influence of "self-love" on moral judgement' and 'fail to recognise how easy it is for us to mistake a self-interested view for an impartial one'.[2] His thought is that cognitive bias and ideological commitments will prevent many of us from identifying the standpoint of the impartial spectator and from realising that we are not impartial.[1] I agree that successfully adopting the standpoint of the impartial spectator is not an easy task. However, moral reasoning more generally is difficult and susceptible to bias. This does not mean that we should cease such

[1] Clarke rightly notes that Smith was sensitive to the fact that we might not always be successful in adopting the standpoint of the impartial spectator.[2] In addition to the passage that he discusses, see, for example, TMS I.i.5.8.[4]

reasoning; rather, we ought to do our best, and we are, at times, successful. Clarke discusses the entrenched attitudes of Antebellum white racists. However, attitudes about slavery have changed, and cognitive biases can change too. In other words, moral progress is possible. Moreover, as I argue in the paper, one of the advantages of the impartial-spectator approach is that it 'provides a standpoint from which *shared* deliberation is possible and *public* reasons are available'.[1] Thus, we can appreciate, with relative ease, whether an objector is reasoning from this standpoint.

Clarke further argues that we should entertain the idea of employing 'experts who are trained to overcome cognitive bias and to set aside ideological commitments' and have them assess conscientious objections (COs) raised by individual practitioners.[2] I do not object to this proposal as a way of assessing COs, but the reliance on 'experts' leads Clarke to reach a more general and unwarranted conclusion: 'We should not rule out the possibility that in the future experts will become better at adopting the standpoint of an impartial spectator than any of us are now. Future experts may deliver a clear verdict regarding the moral acceptability of abortion and medical assistance in dying (MAID)'.[2] I agree that it is possible that there will be concurrence in judgments from the standpoint of the impartial spectator about abortion and MAID at a future time. If this were the case, then abortion and MAID would be conclusively moral or immoral and should be permitted or banned accordingly. However, these hypothetical possibilities do not bear on the current state of affairs. Moreover, I am not sure why Clarke emphasises 'experts' in this regard, since moral reasoning should be available to all. That is, it is one thing to talk about 'experts' in connection with assessing whether individual conscientious objectors are in fact deliberating from the standpoint of an impartial spectator, but it is quite a different thing to argue that ultimately experts will determine the correct moral standards.

Emmerich takes issue with what appears to be my identification of COs with moral objections. He argues that the fact that 'one's moral conscience leads one to object to a particular practice is not a sufficient criteria for establishing a CO'; rather, 'an expectation of involvement in the objected to activity' should 'be a criterion for a moral objection to be considered in terms of CO'.[3] This point is well taken, but my account can easily accommodate it by adding a simple condition on a claim counting as a legitimate CO: in addition to being made from the standpoint of an impartial spectator, the claim in question must pertain to an action that the agent herself has done or is considering doing. Indeed, Smith himself notes that the standpoint of the impartial spectator can be used both to judge others (eg, VII. iii. 3.9) and to judge oneself (eg, TMS III.3.4).[4] I am arguing that it is only in the latter type of case that talk of CO is warranted.

Emmerich also objects that 'questions of CO only arise in the context of some form of good faith disagreement', which occurs 'when both the prevailing moral attitudes and the related objections may be true'.[3] I agree that in many instances of CO, either the prevailing attitudes or the related objection may be true and we have no way of knowing for sure. Indeed, I argued as much in the paper, for example, in the case of abortion and MAID.[1] However, Emmerich argues that the fact that 'the moral disagreement between the prevailing moral attitude and the moral objections of certain individuals cannot be resolved can be considered another criterion of CO'.[3] I do not think that this is a necessary condition on a claim counting as a claim of conscience, since sometimes it is clear that either the prevailing norms or the conscientious objector are correct, namely, when there is a conclusive verdict from the standpoint of the impartial spectator. Consider the German physician in a Nazi concentration camp who objects to performing experiments on Jewish prisoners, or Gandhi's and Luther King's claims of conscience:[1] these are legitimate COs, but Emmerich's criterion is not satisfied, since, contrary

to the abortion and MAID cases, the moral disagreement could be resolved, if all parties reasoned from the standpoint of an impartial spectator.[2]

Finally, Emmerich raises an additional worry pertaining to my association of COs with moral ones: while recognizing a CO establishes 'a right of non-participation', which is a 'negative right', moral objections warrant 'positive action'.[3] However, my account can offer a clear distinction between situations in which the objector's claims should merely be accommodated and situations in which the objector (and others) should also seek to reform the practice. On the one hand, if the standpoint of the impartial spectator issues a conclusive verdict against a certain practice—as is the case with the German physician who objects to human experimentation—then the conscientious objector (and others) ought, in principle, not only to seek non-participation in the practice, but also to reform the practice, or try to.[3] On the other hand, if the standpoint of the impartial spectator does not yield a conclusive verdict against a practice—as is the case with abortion and MAID—the agent in question is not under an obligation to attempt to reform the practice, although she may do so if she desires. This is so because the conscientious objector in such cases should realise that the practice cannot conclusively be shown to be morally impermissible. That is, the difference between normative truth and approximation of such truth can demarcate the difference between (1) a right of non-participation with a *prima facie* obligation to reform the practice and (2) a mere right of non-participation, respectively.

[2] Emmerich develops the claim that 'the instantiation of a CO should be perceived as a sociopolitical device for the resolution of (certain) good faith moral disagreements in particular social, cultural and historical contexts'.[3] While I cannot discuss all the factes of that claim in this brief response, it is worth noting that Smith's impartial spectator is, to a certain extent, sensitive to pertinent social, cultural and historical contexts. See Part V of TMS and Samuel Fleischacker's 'Adam Smith and cultural relativism'.[4,8]

[3] The 'in principle' qualification is important: it might not always be possible for the conscientious objector to do much to reform prevailing norms. Thus, while the German physician should, in principle, attempt to reform the prevailing norms, there might be little that he can do (apart from refusing to conduct the experiments in question).

Minerva is sceptical of my approach for justifying CO in medicine, arguing both that medical professionals entered the profession 'knowing that they will be required to perform a procedure they find morally impermissible' and that 'the duty to perform a treatment considered beneficial by the patient and legal (within a country) is not based on the assumption that the healthcare practitioner willing to perform it is morally right'.[5] However, if we understand the justification of CO not merely as a function of what the objector believes, but as a function of the extent to which the relevant beliefs might be true, it does not matter if a person entered the medical profession aware of its professional obligations, since the obligations can be wrong in the same way that a law can be wrong, if it falls short of certain moral standards. Moreover, while I agree with Minerva's claim about how professional duties are currently defined, my argument pertains not to what *is* the case but to what *ought* to be the case. If my argument is successful, we might need to revise current practices. Indeed, a feature of my account is that the objector might be getting things right, while society is getting them wrong.

Nevertheless, Minerva does remind us that patients' interests are also at stake and that they should 'obtain the treatments they are entitled to (and need) regardless of moral disagreements between patients and doctors or between society and doctors'.[5] I agree that if we allow CO in medicine, we will need to find ways of protecting patients' interests. However, referring patients to non-objecting medical practitioners is tricky, since we do not want medical practitioners to be complicit in potential wrongdoing. Therefore, in order to protect both patients' and practitioners' interests, I argued in the paper—relying in part on Minerva's own position[6]—that we should not require referral if patients receive sufficient advance notice about practitioners' COs and if there are enough non-objecting practitioners in the relevant geographical area.[1] Of course, this means that there will be instances when an objecting practitioner will need to refer the patient to

someone else or even provide the requested service herself. I think that this is a reasonable compromise: given the fact that the standpoint of the impartial spectator does not yield a conclusive verdict regarding, for example, abortion, a reasonable medical professional will have to realise that, if the medical community has done everything possible to honour her objection and the patient's interests are at stake, she will need to refer or provide the service. An impartial spectator would, I believe, approve of this compromise.

Saad raises two main objections to my account. First, he argues that my claim to objectivity is unsubstantiated, since the impartial spectator, who is 'the product of social norms and the moral imagination of individuals', issues verdicts that are 'relative to individual or collective idealisation of morality, and, therefore, reflects cultural bias'. Second, he argues that my account implicitly relies on moral absolutes because I admit of certain principles, such as taking into consideration all parties and their interests from a third person perspective, which are independent from cultural norms.[7] My understanding of the normative structure of the impartial-spectator account is as follows: the account specifies the hypothetical conditions that guarantee the reliability of agents' responses in constituting the standard in question, and, if an actual agent or an actual community of agents are not under those conditions, their responses are not reliable as setting this standard. However, the hypothetical conditions—not the first-order norms—are themselves constructed from the psychology and interactions of actual human beings. In other words, facts about the morally appropriate and inappropriate are constituted from hypothetical conditions that—while agents in a given society might have yet to attain them—can be constructed from those agents' shared experiences. In doing so, the account offers a standard of moral judgement that can transcend the biases of the society which gave rise to it.

As I argued in the paper, Smith also provides a rationale for why we end up with a standpoint that takes into consideration all parties and their interests from a third person perspective: People might come to realise that the actual spectators who judge them are biased, either because they are not informed about the facts or because they have a personal stake in the circumstances and are thus unreliable in determining what is worthy of approval. Because of their desire to be worthy of approval, people will seek to go beyond the actual spectators they encounter and seek approval from an imagined impartial spectator who is fully informed and has no personal stake in the circumstances. This spectator, 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', constitutes a third person standpoint that can take into consideration the interests of all relevant parities.[1,4][4]

I would like to conclude by noting that my main aim in the paper was to bring to the forefront the relevance of the truth of COs to their justification. If readers find this general idea appealing, but would rather account for the truth of claims of conscience in a different manner from the one I have proposed, such attempts would be more than welcome.[5]

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[4] There is much more to be said about Smith's account and I develop aspects of it elsewhere.[9,10] See also footnote 2.

[5] Saad concludes by offering a sketch of a different account of conscience based in part on Thomas Aquinas's thought.[7] While his suggestion is interesting, I cannot discuss its many merits and problems in this brief response.

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