



# the doctor's conscience

By John Wyatt

**Conscientious objection as a right is enshrined in law and in professional guidelines, but has recently come under attack. These arguments are described, but the concept of the conscience goes to the heart of what it means to act in a moral way, with integrity. There have been shocking historical examples of medical abuses after conscience has failed. The right helps preserve individuals' moral integrity, preserves the reputation of the profession, safeguards against coercive state power, and protects from discrimination those with minority ethical beliefs.**

The right of conscientious objection is enshrined in medical law. For example, the 1967 Abortion Act states that '...no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection'.<sup>1</sup> Similarly, the Human Fertilisation and Embryology Act preserves an express right for health professionals to refuse to participate in any treatment authorised under the Act.

However, the right of conscientious objection is increasingly coming under attack from a number of prominent ethicists and writers. Professor Julian Savulescu is a prominent bioethicist:

*A doctor's conscience has little place in the delivery of modern medical care. What should be provided to patients is defined by the law*

*and by the consideration of just distribution of finite medical resources, which requires a reasonable conception of the patient's good and the patient's informed desires...*

*...If people are not prepared to offer legally permitted, efficient and beneficial care to a patient because it conflicts with their values, they should not be doctors. Doctors should not offer partial medical services or partially discharge their obligations to care for their patients.*

*To be a doctor is to be willing to offer appropriate medical interventions that are legal, beneficial, desired by the patient, and a part of a just healthcare system... If we do not allow the moral values of self-interest to corrupt the delivery of the just and legal delivery of health services, we should not let other values, such as religious values, corrupt them either.<sup>2</sup>*

A recent article in the *New England Journal of Medicine* stated:

*As the gate-keepers to medicine, physicians and other health care providers have an obligation to choose specialties that are not moral minefields for them. Do you have qualms about abortion, sterilization and birth control - do not practice women's health. Do you believe that the human body should be buried intact - do not become a transplant surgeon...conscience is a burden that belongs to the individual professional; patients should not have to shoulder it...<sup>3</sup>*

## Arguments against the right of conscientious objection

- 1. Conscientious objection leads to inefficiency and inequity in the provision of health care. It is inconsistent with modern healthcare systems.**

The dominant vision for modern healthcare is that of the machine. Healthcare systems are conceived

as highly complex, integrated, interdependent, standardised machines for treating healthcare consumers (patients) and for delivering healthcare. Healthcare managers have adopted the language of the service industry. Medical practice should be 'cost-effective, evidence-based, time-efficient, consistent, high quality, and consumer-led'.

But in this vision of a well-oiled machine, it is essential that each element performs its function efficiently. Each cog must run smoothly if the machine is going to achieve maximum efficiency. So the doctor who refuses to fit in with the agreed protocol or care pathway because they have a conscientious objection to a particular type of treatment, for example, is seen as problematic and anti-social. There is no doubt that gynaecologists who have a conscientious objection to performing abortions create particular difficulties for healthcare managers who are tasked with providing an efficient abortion service. Doctors who are prepared to perform abortions may feel that it is unjust that they have to take on an extra workload because of their colleague's personal convictions. Similarly, a general practitioner who is unwilling to refer one of their patients for an abortion on conscience grounds may cause delays and perceived inefficiencies in the flow of patients from primary to secondary services. So in modern healthcare systems it is all too easy for the doctor with a conscience to be seen as problematic, troublesome and disruptive.

- 2. Conscientious objection leads to logical inconsistencies.**

It is generally agreed that doctors should not be allowed to refuse to treat patients because of their own self-interest or irrational prejudices. A doctor is not free to refuse treatment to people with AIDS because of the risk of infection. Similarly,

a racially prejudiced doctor is not free to refuse to treat patients from particular racial minorities. So if self-interest and racial discrimination are not appropriate grounds for conscientious objection, why should certain minority religious beliefs be respected? It is argued that there is no logical basis to allow one sort of belief to be respected whereas other beliefs and values are regarded as inappropriate. If we allow doctors to claim the right of conscientious objection we open the door to discriminatory and idiosyncratic medical practice.

### 3. Religious and moral values belong to the private sphere of life and not to the public sphere.

Most people agree that privately held beliefs and 'values' are important parts of our lives. However, it is argued that these personal beliefs should remain in the private sphere of our personal lives, thoughts and relationships. Once we enter into the role of medicine we step into the public sphere. Particularly when we are employed within a state health system such as the UK National Health Service, we are acting as public servants. A doctor should not allow his or her personal beliefs to influence the care which is given to the patient. Religion belongs to the private and personal sphere of life. Public servants must act in the public interest, not in their own.

### 4. Conscientious objection discriminates against atheists and those without religious beliefs.

Since it is mainly religious believers who claim the right of conscience, it is argued that this discriminates against atheists and those who claim allegiance to no religious faith. Why should believers be allowed to escape from their contractual obligations as a doctor, while atheists have no such privilege? To treat people with religious values differently from those with secular moral values is a form of blatant discrimination.

### 5. Conscientious objection is always open to abuse by unscrupulous, lazy, bigoted, or self-centred individuals.

There is anecdotal evidence that many junior doctors who are training in

obstetrics and gynaecology are claiming the right of conscientious objection in order to avoid participation in abortion services during their training. Because of the difficulty of finding staff prepared to perform abortions, it is said that some NHS hospitals have chosen to outsource these services to private abortion providers. But do all the doctors who claim the right of conscience have a genuine religious and moral objection to abortion, or is this simply a means for unscrupulous or lazy doctors to avoid their responsibilities?

### The practice of medicine enshrines moral commitments and requires moral integrity

The arguments above may seem persuasive, and in any case it is often assumed that the role of the conscience in medicine is relevant only to a few specialised and limited areas, such as abortion or contraception. But in fact the concept of the conscience goes right to the heart of what it means to act in a moral way, to act with integrity.

It is striking that the moral commitments underlying medicine can be traced all the way back to the Hippocratic roots of Western medicine. The Hippocratic doctors of the 3rd and 4th centuries BC went out of their way to differentiate themselves from the run-of-the-mill healers, herbalists and snake-oil salesmen who were offering their wares. The Hippocratic doctors were different because they had taken a solemn and binding oath which directed, governed and limited all their medical activities.<sup>4</sup>

The earliest version of the Hippocratic oath starts with an invocation to the gods: 'I swear by Apollo Physician, by Asclepius, by Hygeia, by Panacea and by all the Gods and Goddesses, that I will carry out, according to my ability and judgement, this oath...' In the first centuries after Christ the oath was Christianised, and the introduction was changed to the words 'I swear by Almighty God...' but the basic structure is unchanged.

It is clear that the heart of the Hippocratic oath is a recognition that the individual

## Moral commitments of the doctor, from Good Medical Practice<sup>5</sup>

- Make the care of your patient your first concern
- Protect and promote the health of patients and the public
- Provide a good standard of practice and care
  - Keep your professional knowledge and skills up to date
  - Recognise and work within the limits of your competence
  - Work with colleagues in the ways that best serve patients' interests
- Treat patients as individuals and respect their dignity
  - Treat patients politely and considerately
  - Respect patients' right to confidentiality
- Work in partnership with patients
  - Listen to patients and respond to their concerns and preferences
  - Give patients the information they want or need in a way they can understand
  - Respect patients' right to reach decisions with you about their treatment and care
  - Support patients in caring for themselves to improve and maintain their health
- Be honest and open and act with integrity
  - Act without delay if you have good reason to believe that you or a colleague may be putting patients at risk
  - Never discriminate unfairly against patients or colleagues
  - Never abuse your patients' trust in you or the public's trust in the profession

doctor is practising before a higher power – a power to whom he or she is accountable. But it is striking that Hippocratic doctors did not swear by the Emperor, by the State, or by local lords and authorities. Their oath was taken before the highest possible authority. In philosophical terms it is a recognition of transcendence, an appeal to ultimate authority.

So doctors are not just paid artisans who do whatever their paymasters require. They are not just civil servants whose first loyalty is to the state. They are not just salesmen whose job is to keep the customers satisfied. They walk to the beat of a different drum.

Ever since Hippocrates, the practice of medicine has been founded in a number of core ethical values. Practising good medicine is a moral activity and not just a technical one. The foundational values of medicine are part of physicians' understanding of who they are and they have provided the basis for historical codes of medical ethics, such as the Hippocratic Oath, the Declaration of Geneva, and the General Medical Council's *Good Medical Practice*.

These core ethical values become part of the physician's understanding of who they are and what they have entered medicine for. They are central to the doctor's self identity. And when a person is coerced by employers, or by the power of the state, to act in a way which transgresses these core ethical values then their internal moral integrity is damaged.

It is interesting that the word 'integrity' is used in medicine to mean 'intact', 'functional' or 'healthy'. Orthopaedic surgeons talk about the integrity of a joint, for example. So to have moral integrity is to be morally intact, to be internally healthy. Conversely, when I am forced to act in a way which violates my moral principles I am damaged internally, I become morally impaired.

### Examples of the corruption of medicine

Over the last century there have been many shocking cases when the core ethical commitments of medicine have been corrupted and violated:

- In Stalin's Russia, psychiatrists imprisoned, sedated and electro-shocked political dissidents.<sup>6</sup>
- In Nazi Germany, physicians performed barbaric medical experiments on prisoners and supervised the execution of millions of Jews and disabled people.<sup>7</sup>

- In Abu Ghraib and Guantanamo Bay, US military doctors were actively involved in the supervision of torture.<sup>8</sup>
- In the USA, physicians planned and carried out the infamous Tuskegee experiments in which hundreds of patients with advanced syphilis were deliberately deceived and left untreated.<sup>9</sup>
- In China, doctors have been repeatedly involved in preparing prisoners for execution and subsequently removing organs for transplant purposes.<sup>10</sup>

So we must not be naïve in thinking that medical practice cannot become morally corrupted. History teaches us that when doctors are subject to coercion from state power or other sources, they may act in ways which deny the fundamental moral values of good medicine. It is therefore an essential safeguard for the moral health of medicine that legal and regulatory systems are maintained, to protect the rights of doctors to refuse to take part in practices which violate their most profound moral convictions.

There is no doubt that part of the high level of trust which doctors still retain in our society stems from their reputation as independent caring professionals who have an open and stated duty to act with moral integrity, in the best interests of their patients. If doctors are perceived to be merely state *apparatchiks*, contracted and obliged to carry out the bidding of politicians, then why should we trust them to do the best for us?

### Legal frameworks and the right of conscience

It is a fundamental principle of UK common law that doctors, like other professionals, should not be compelled by the state to act in a way which violates their conscience. The Abortion Act and the Human Fertilisation and Embryology Act both enshrine the right of doctors to refuse on the grounds of conscience to participate in treatments authorised under their jurisdiction.

Article 9 of the European Convention on Human Rights states that 'Everyone has the right to freedom of thought,

### Abortion Act 1967

Section 4 (1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection: Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

conscience and religion; this right includes freedom to manifest his religion or belief in worship, teaching, practice and observance'. However, it is not yet clear to what extent doctors will be able to claim the right of conscientious objection under Human Rights legislation.<sup>11</sup>

The UK General Medical Council guidance for doctors in *Good Medical Practice*<sup>5</sup> reflects a balance between respect for the best interests of the patient and respect for the doctor's right to conscience:

*You must treat your patients with respect whatever their life choices and beliefs. You must not unfairly discriminate against them by allowing your personal views to affect adversely your professional relationship with them or the treatment you provide or arrange...*

*If carrying out a particular procedure or giving advice about it conflicts with your religious or moral beliefs, and this conflict might affect the treatment or advice you provide, you must explain this to the patient and tell them they have the right to see another doctor. You must be satisfied that the patient has sufficient information to enable them to exercise that right. If it is not practical for a patient to arrange to see another doctor, you must ensure that arrangements are made for another suitably qualified colleague to take over your role.*

Although the doctor has a right not to act against his or her conscience, this right

must be balanced by respect for the patient's concerns and interests. In particular there is a duty to make sure that patients are fully informed about their rights to see another doctor. Similarly, doctors cannot refuse to provide any care for a patient on the grounds that they have undergone or are about to undergo a procedure to which the doctor objects. Doctors still have a duty to act in the best interests of their patient. As the GMC has put it: 'It is the procedure to which the doctor objects, not the patient'.<sup>11</sup>

## Christian thinking about the conscience

In biblical thinking, the conscience is one of the most fundamental aspects of what it means to be a human being. The conscience is part of our created humanity and it is present in all, not just in those who are believers. The conscience is seen as, in some sense, an internal reflection of God's law for all mankind. The Apostle Paul, writing of the Gentiles who did not receive the Mosaic law, states that 'what the law requires is written on their hearts'.<sup>12</sup>

But the human conscience as an internal moral compass is not an infallible guide to morality. As fallen human beings, our consciences are inevitably corrupted and contaminated by evil. It is possible for human beings to reach a point in which their conscience becomes completely insensitive.<sup>13</sup> So the teaching of the New Testament is that the conscience needs to be constantly instructed, informed and realigned by Christian truth.<sup>14</sup> The education of a godly conscience is an essential aspect of the growth into maturity of every Christian believer.

## Abuse of conscientious objection

The right of conscientious objection is a precious privilege which our law and professional guidelines have granted to us. Like all privileges it is open to abuse, and there is a grave danger that selfish, misguided and thoughtless appeals to conscience may mean that the privilege is threatened and ultimately lost. There have been cases when doctors have claimed the right of conscientious objection, when their real motivation was laziness, to avoid burdensome or boring duties.

Conscientious objection may cause inefficiencies and delays in medical services, and doctors have a duty to ensure that their actions do not create avoidable problems for their patients and colleagues.

It is not always clear when an appeal to conscience is appropriate and when not. For example, it seems clear that a doctor who is a Jehovah's Witness should not be allowed to refuse to treat with a blood transfusion a patient bleeding to death. But should a specialist in regenerative medicine be allowed to refuse to use a new stem cell therapy derived from embryos or aborted fetuses? Should doctors who hold religious beliefs forbidding the use of alcohol be allowed to refuse to treat patients with alcohol related illness?

## Conclusion

The right of conscientious objection is not

a minor or peripheral issue. It goes to the heart of medical practice as a moral activity. Current UK law and professional guidelines respect the right of doctors to refuse to engage in certain procedures to which they have a conscientious objection. However, the right of conscience is not absolute and doctors have a duty to preserve the best interests of their patients and to keep them fully informed.

The right of conscience helps to preserve the moral integrity of the individual clinician, preserves the distinctive characteristics and reputation of medicine as a profession, acts as a safeguard against coercive state power, and provides protection from discrimination for those with minority ethical beliefs.

*John Wyatt is Professor of Ethics and Perinatology at University College London*

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