

CONSCIENCE AND ITS ROLE IN MORAL LIFE

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ABSTRACT

Elizabeth R. Brassfield: Conscience and Its Role in Moral Life
(Under the direction of Douglas MacLean)

I give an account of conscience as a mental process that compares an agent's considered actions to her internalized moral norms. The dictates of conscience sometimes conflict with both an agent's reflectively endorsed moral beliefs and the requirements of objective morality. Despite these errors, conscience is useful as a moral heuristic that can quickly and effortlessly provide action-guidance in situations in which an agent is unable to deliberate or reflect. Further, it can alert us to the fact that something morally valuable is at stake, thus prompting further reflection when the circumstances allow. I argue that the fact that an agent acted on her conscience can affect others' moral evaluation of her actions, but that sometimes morality requires the violation of conscience. In deciding how to act, an agent always ought to consider and properly weigh the dictates of her conscience.

Discussions of freedom of conscience should be understood as referring to the subset of an agent's conscience that concerns her reflectively endorsed moral values. I describe three closely related domains of freedom of conscience: the freedom to hold one's own moral views, the freedom to express one's conscience, and the freedom to act in accord with one's conscience. I argue that there are moral limits to freedom within all three domains. Other agents acting as private citizens and outside of the bounds of special relationship-based obligations are sometimes permitted to interfere with another agent's expression of conscience or conscience-based actions when doing so is necessary to prevent harm to others. Conscience-based freedoms are highly

affected by context. Within the context of medical care, I argue that a physician is required not just to abide by the principles of medical ethics in action, but further to commit to and internalize these requirements such that they become a part of her conscience. A physician is sometimes morally permitted to refuse to provide patients with requested medical care when doing so would violate her conscience. However, health care institutions are permitted determine the scope of medical care that physicians may provide as a condition of their employment.

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INTRODUCTION

My interest in the notion of conscience was initially born out of an engagement with the bioethics literature on conscientious objection within medicine. The central questions addressed in this literature are (1) whether or not medical professionals are morally permitted to refuse a competent patient's request for a safe, effective, legal medical service on the grounds that providing that service would violate the professional's conscience, and (2) what, if any, protections should be put into place to protect clinician's consciences?

Some argue that there is no place for "personal" conscience in medicine, maintaining that every individual physician must be willing to provide those services that fall within the scope of her medical competence or else has no business practicing medicine.¹ Others argue that conscience-based refusals are permissible, but only under some circumstances or when certain conditions are met.

Mark Wicclair, for example, argues that in any case of conscientious objection the following should be considered: whether the objection is based on one of the physician's core ethical values, whether the objection conforms with accepted professional norms, whether the core value at play is related to the physician's conception of herself *as a physician* and not merely as a moral agent, and how significantly the patient's rights and interests will be affected by the objection.² Another middle position is taken by Robert Card, who argues that claims to

¹Cf. Savulescu, "Conscientious Objection in Medicine"; Card, "Conscientious Objection and Emergency Contraception"; Stahl and Emanuel, "Physicians, Not Conscripts — Conscientious Objection in Health Care."

²Wicclair, "Conscientious Objection in Medicine."

conscientious objection are justified when they are grounded in a core, genuinely held moral belief that is consistent with relevant empirical information, when the objection does not cause unreasonable harm to patients, is not unreasonably self-interested, is not based on a discriminatory belief, and does not violate a physician's duty of care.³

There is a common sentiment that acting on one's conscience is generally valuable or good, and often morally admirable, which supports claims that conscience merits protection. But it is also widely accepted that any individual agent may have a conscience that tells her to act in ways that are morally bad or wrong: that is, that conscience is fallible. If acting on conscience is always admirable and deserving of protection, then it would seem that an agent who is led to do something morally heinous by her conscience (like commit a murder) deserves admiration and that this conscience-based action at least *prima facie* warrants protection. This is difficult to endorse. But, if acting on one's conscience is admirable or deserves protection only when it leads a person to act in ways that are morally right, then it is unclear what is added by appealing to conscience. We may as well just claim that acting rightly is admirable and that morally right actions ought to be protected.

An important step in determining what protections are merited by conscience, then, is to clarify and explain the way in which acting on one's conscience is valuable despite sometimes leading an agent to act immorally. And to understand the value of conscience, it will be important to get clear on what exactly conscience *is*. But it became clear as I read through the conscientious objection literature that the term 'conscience' was being invoked in different and sometimes incompatible senses. Frequently, writers do not offer any explicit definition of

³Card, "The Inevitability of Assessing Reasons in Debates about Conscientious Objection in Medicine."

conscience but rather rely on the reader's intuitive understanding of conscience,⁴ or vague definitions are provided without much explanation or defense. Sometimes the term 'conscience' is used to pick out an agent's moral *beliefs*, other times it is used to pick out a particular *mental process* with certain features. For example, Julian Savulescu defines conscience as "an individual's values."⁵ Similarly, Robert Card appears to understand conscience as referring to an agent's set of moral beliefs.⁶ In contrast, both James Childress and Jefferey Blustein describe conscience as a "mode of consciousness" by which we evaluate or "see" the moral value of our actions. And the American College of Obstetricians and Gynecologists (ACOG) describes conscience as "a form of self-reflection on and judgment about whether one's own acts are obligatory or prohibited."⁷

This lack of perspicuity led to my interest in conscience as a general phenomenon. It seemed to me that there was some kind of uniquely identifiable mental process that deserved to be called 'conscience.' At the same time, a lot of the questions we want to ask about 'conscience' appear to be about an agent's moral beliefs or values, rather than about some particular mental process. What is needed first is a clarification of how we should understand conscience as a mental process and second, an investigation into the relationship between this mental process and an agent's moral beliefs. With these preliminaries addressed, we will be

⁴Cf. Wicclair, "Conscientious Objection in Medicine"; Wicclair, "Is Conscientious Objection Incompatible with a Physician's Professional Obligations?"; Antommara, "Adjudicating Rights or Analyzing Interests: Ethicists' Role in the Debate Over Conscience in Clinical Practice."

⁵Savulescu, "The Proper Place of Values in the Delivery of Medicine."

⁶Card, "Is There No Alternative? Conscientious Objection by Medical Students"; Card, "The Inevitability of Assessing Reasons in Debates about Conscientious Objection in Medicine."

⁷"ACOG Committee Opinion No. 385."

equipped for a more productive discussion of freedom of conscience and the role of conscience within medicine.

This dissertation, then, proceeds as follows. In the first chapter, I seek to isolate the phenomenon of conscience as a mental process that plays a particular role in our moral psychology: that of producing dictates demanding or forbidding that we act in certain ways, the violation of which results in guilt, remorse, or psychological discord. It would be a mistake, I think, to identify conscience with the general process of moral deliberation, even restricting that deliberation to questions of how we as first-person agents ought to act, though of course we can and do deliberate about how to act and reach judgments about what morality requires of us in any given situation on the basis of such deliberations. It is worth noting that sometimes we experience obligations as being “given” to us. Such “dictates” pop into our conscious experience unbidden, and seem to be received by us rather than generated by our conscious mind. The “voice of conscience,” though private and internal, is not experienced as our own voice. In contrast, when we arrive at a judgment about how we ought to act as a result of moral deliberation, we experience that judgment in our own voice. Conscience as a mental process, I argue, should be identified with the spontaneous process that gives rise to such dictates.

We can, and should, isolate and describe this mental process of conscience from the different phenomenon of moral deliberation about how to act. I argue that this mental process is one that operates constantly in the background of our conscious experience, comparing considered actions to an agent’s internalized moral norms and spontaneously and inevitably producing a dictate when one of those norms requires or forbids a considered action. The dictates of conscience are of the form “I must (not) φ ,” and in producing a dictate one’s conscience produces a sense of felt obligation to (not) φ . Failing to act in accord with the

dictates of conscience and this sense of obligation causes the agent to feel guilt, remorse, or psychological discord.

Internalized moral norms, like the process of conscience, are a part of an agent's subconscious. For most agents, there is a substantial amount of overlap between their internalized moral norms and their reflectively endorsed moral views, but these two sets are not identical. We begin to internalize moral norms before we are able to fully engage in rational deliberation, and some of them get really *stuck* in our psychologies. What's more, when we adopt new moral beliefs as a result of rational deliberation they are not immediately deeply integrated into our moral psychologies in the way that internalized moral norms are. So, some of our reflectively endorsed moral beliefs are not represented by our internalized moral norms, and some of our internalized moral norms may be ones that we would or have reflectively rejected. The upshot is this: sometimes our conscience demands that we act in ways we do not judge, upon reflection, to be morally required of us. Or, it forbids us from performing actions that we judge upon reflection to be morally permissible. And conscience stubbornly continues to plague us with guilt and remorse if we violate even these reflectively rejected dictates.

So, conscience and moral deliberation are distinct processes within our moral psychologies. A lot of the time they will both guide us to the same action, but sometimes the dictates of conscience conflict with the judgments of our moral deliberation. Though these two processes are distinct, they are related to one another in that the outputs of conscience (its dictates) can enter into the process of moral deliberation as inputs. The fact that one's conscience demands that one ϕ in some situation is one piece of data that is relevant to the determination of one's moral obligations. When an agent notices that her conscience demands that she ϕ , this tells her that failing to ϕ in these circumstances would violate one of her

internalized moral norms. Further reflection on what norm is at play and whether or not that norm is one she endorses is then warranted in the deliberation about how she ought to act.

Sometimes, one must act quickly and there is no time for such deliberation. Other times, an agent may not reflectively recognize that something of moral value is at stake. One value of conscience, then, is that it operates spontaneously, quickly, and without requiring the intentional input of effort. It can thus provide action guidance that approximates an agent's deliberative judgments when deliberation is unavailable or undesirable for one reason or another.

Having clarified both the distinction and relationship between these two processes – conscience and moral deliberation – we should return to the observation that the term ‘conscience’ is sometimes used in a way that is synonymous with an agent's moral beliefs, or one's best moral judgments about how one ought to act. Some of the questions we want to ask about conscience are really questions about our best moral judgments or our deeply held moral beliefs, rather than the mental process itself. Discussion of issues relating to “conscience” broadly construed are best approached by clarifying at the outset precisely *what* it is that is up for discussion: the mental process of conscience, or the judgments regarding how an agent ought to act produced by the (related, but distinct) process of moral deliberation? The former *process* is not subject to rational evaluation or criticism because it is sub-rational and not under the conscious control of the agent. An agent may not be able to give any reasons in support of a dictate produced by her conscience. The dictates produced by the process of conscience carry with them a strong sense of felt obligation to comply, and the threat of guilt or remorse should we fail to do so. The latter process of moral deliberation, in contrast, is all about reasons. It is appropriate to criticize an agent for deliberating poorly or without due care. The judgments that result from this process may be held only tentatively: I may judge on balance that I really ought

to ϕ , but feel conflicted or unsure of this conclusion for various reasons. Both the dictates produced by conscience as a mental process and the judgments that result from engaging in moral deliberation are fallible, in the sense that they may get an agent's moral requirements wrong.

Keeping these distinctions in mind will be important in approaching the questions I address in the remainder of the dissertation. In the second chapter I turn to questions of the role of conscience in our moral evaluation of agents. That is, how does the fact that an agent acted on her conscience affect our evaluation of whether she acted rightly or wrongly? This is really two separate questions: one about the mental process of conscience and another about an agent's deliberative judgments regarding how she should act. Some authors have argued that agents are always morally required to act on their consciences. This claim can be understood in two ways: first, as a claim that all conscience-based actions are necessarily morally permissible, or, second, as a claim that the correct decision-making procedure for an agent to adopt is to consult her conscience and to act accordingly.

Understood in the first way, I reject this claim. Both the mental process of conscience and the judgments produced by moral deliberation are fallible: that is, they may lead an agent to act in ways that are objectively morally wrong. Though this may lead her to act wrongly, an agent should *decide* how to act in difficult situations by carefully deliberating about what morality requires of her. Such moral deliberation, though fallible, represents an agent's best effort to determine her moral requirements and is an expression of her moral agency. The mental process of conscience, as I have described it, plays an important role in moral deliberation. Though an agent should not adopt a policy of uniformly acting in accord with its dictates, neither should she completely ignore these dictates. Rather, she should take account of them in her

deliberative process, and should view the recognition of conflicts between these dictates and her reflectively accepted moral principles as opportunities for critical evaluation and perhaps revision of those principles.

Although acting on one's conscience does not guarantee that one acts rightly, and although one ought sometimes to choose to violate the dictates of one's conscience, we can make sense of the common sentiment that acting on one's conscience is admirable by attending to the connection between conscience and one's sense of obligation. The mental process of conscience attaches a sense of moral obligation to the actions it commands. Acting on one's conscience because one is motivated by this sense of moral obligation is admirable (even when it in fact leads to wrong action).

It is to freedom of conscience that I turn in the third chapter. As I understand them, claims to freedom of conscience concern an agent's endorsed moral views rather than the mental process of conscience per se. It is those internalized moral norms that both figure into the mental process of conscience, and thus generate a sense of felt obligation, and are endorsed by an agent, and thus represent her best deliberative judgment, that we should consider in exploring the scope of freedom of conscience. I distinguish between three interrelated domains of freedom of conscience: freedom to hold one's own moral views, freedom to express those moral views, and the freedom to act on those moral views. Although freedom of conscience is valuable because of the intimate connection between an agent's deeply held moral views and her identity as a person, and because these freedoms are necessary in order for an agent to possess integrity, these freedoms are not absolute. There are moral constraints on the moral views which an agent may hold or express, in addition to the moral limits on permissible conscience-based actions considered in Chapter Two. Further, other individual moral agents may legitimately act in ways

that prevent or increase the difficulty of the expression of one's moral views, or of one acting on those moral views. And, even where it is impermissible for another agent to interfere with one's conscience-based actions, it is nonetheless often permissible for others to react to such actions in ways that impose undesirable costs, such as refraining from engaging in interpersonal relationships or levying moral criticism.

The specifics of which interferences are permissible and the corresponding scope of freedom of conscience are highly context-dependent. When agents act not as private citizens but within some particular professional or institutional role, the additional moral obligations to which that role is subject and the details of the context in which it is exercised can change the contours of legitimate conscience-based freedoms. This brings us back, finally, to the questions that sparked my interest in this project to begin with. Whether physicians may permissibly refuse to provide requested medical services to which they have a conscience-based objection, and what protections should be put into place for physicians who do make such objections, are questions about the scope of freedom of conscience within the medical profession.

I focus specifically on physicians, and the way the professional moral obligations of respect for patients, beneficence, non-abandonment, and informed consent along with the context of the patient-physician encounter affect the freedom of conscience enjoyed by agents who choose to enter this profession. I contend that physicians are morally criticizable to the extent that they fail to commit to their professional moral obligations in a way that incorporates those obligations into their consciences. This is, in effect, a limit on a physician's freedom to choose the moral commitments that she holds. Expressing one's moral views and engaging in moral deliberation with patients is a proper part of a physician's professional role, but such discussions should proceed with due attention to the power imbalance that is a hallmark of patient encounter

so as to avoid coercion. Whether a physician may permissibly refuse a patient's request for a legal, safe, effective medical service when providing that service would violate one of her moral commitments ultimately comes down to the balance of burdens to patient and physician.

However, I emphasize that physicians who have incorporated their professional moral commitments into their consciences will often not find such refusals to be a neat solution that straightforwardly protects their moral integrity, because the moral commitments which motivate them to refuse such requests often come into conflict with their professional moral obligations.

There are a few absolute limits to conscience-based refusals that derive from a physician's professional moral obligations. First, refusals motivated by an objection to who the patient is as a person or the moral views that she holds fail to respect the patient as a moral agent in her own right and are thus never permissible. A physician cannot legitimately refuse to counsel a patient about her legal medical options, as such refusals violate informed consent, and the principle of non-abandonment precludes refusals to refer patients to another physician. Finally, conscience-based objections can never justify failure to provide emergency life-saving care.

Physicians often practice within larger health systems, and medical practice occurs within a political state. Thus, the question of how health care institutions or the state ought to regulate conscience-based freedoms within medicine arises. I argue that health care institutions ought to be permitted to require or forbid physicians from providing particular medical services as a condition of employment (with similar exceptions as those that apply to individual physician conscience-based refusals). This permits organizations like Catholic hospitals or Planned Parenthood clinics to ensure that they are able to deliver medical care consistent with their missions. Although this does limit an individual physician's freedom of conscience somewhat,

the ability to require that certain positions are filled by those willing to provide some particular contested medical service enables the state to address concerns about lack of access to such contested services in particular parts of the country. This scheme, on which individual physicians are morally permitted to refuse to provide contested medical care but on which health care institutions, too, are permitted to shape the scope of legal medical care that they offer, represents a reasonable balance between protecting patients' access to legal medical care while recognizing the value of physicians' conscience-based freedoms.

CHAPTER ONE: CONSCIENCE

I

When the right path is unclear, how do you decide how you ought to act? You may ask your friends for guidance, or seek out the wisdom of experts. Often you are advised, as Jiminy Cricket tells Pinocchio to do, to “let your conscience be your guide.” The thought at the core of this piece of advice is that in the end you must do what *you* are convinced is right, regardless of the opinions or urgings of anyone else. Used in this way, the term ‘conscience’ appears to refer to an agent’s ability to tell right from wrong, or to the way in which she determines how she ought to act.⁸

This use of the term ‘conscience’ suggests that the dictates of conscience – what it is that conscience says you ought to do – are all-things-considered judgments about how you ought to act. It is then tempting to hold that conscience is a process of deliberation about how one ought to act, and that not following one’s conscience amounts to a form of *akrasia* driven by the presence of some competing desire or passion. This picture of conscience, I will argue, is mistaken.

Imagine that you are in charge of a friend’s young child for the weekend, and someone approaches you and asks you to kill the child. Should you kill the child? You immediately experience (I hope) a strong opposition to doing so. How you ought to act in this situation is

⁸This especially comes out in the literature on whether conscientiousness is always a virtue, or whether an agent can ever be required to act against her conscience. Cf. Candlish, “The Origins of Subjectivism”; Fotion, “On ‘Conscience’”; Gosling, “The Natural Supremacy of Conscience”; Govier, “Is Conscientiousness Always - or Ever - a Virtue?”; Kordig, “Pseudo-Appeals to Conscience”; Murphy, “The Conscience Principle.”

immediately obvious to you; no reflection on or deliberation about what you ought to do is required.

Now, imagine that this child you are watching is dying from an incurable disease, which will inevitably kill him within the next few days no matter what you do. The person who has asked you to kill the child explains that he has a drug which can end the child's life painlessly and quickly, and that if the child is killed with this drug (instead of allowed to die naturally) a foundation that studies his disease will be able to use his body for research that will very likely lead to a cure, saving the lives of everyone else suffering from this disease. You will still experience the immediate opposition to killing the child that was present in the first case. But, now, when you consider what you ought to do, you are likely taking into account all the good that could come of your killing this child, and trying to determine whether killing him under these circumstances would truly constitute a *harm*, and asking yourself what these facts mean about what the right course of action is. That is, you are engaging in deliberation about how you ought to act.

The point is not that you will or should change your mind about what you ought to do: you may go through this process of deliberation and still decide that you ought to refuse the request. But notice that the experience of a strong opposition to killing the child is present in both the first scenario, in which you do not (and need not) deliberate about what to do, and in the second scenario, in which you almost certainly pause to deliberate at least momentarily. Notice too that in the second scenario the experience of strong opposition is present at the *beginning* of the deliberative process: it is information you have prior to beginning deliberation. This felt opposition creates a strong presumption in favor of the conclusion that you ought not to kill the child, albeit a defeasible one: your deliberative judgment may either affirm or reject it.

Whatever judgment results from this deliberative process, whether or not it accords with the initial opposition you felt to killing the child, it is a distinct entity.

Both our immediate opposition or attraction to performing an action and our considered judgments in favor of or against that action play an important role in our moral psychology, but it is important to recognize that there are two distinct processes at play. I will argue that we should identify conscience with the process that produced the immediately felt opposition to killing the child. The dictates of conscience do not directly result from deliberation about how one ought to act; their genesis is separate from the deliberative process. The dictates of conscience can, however, figure *into* deliberation about how to act: what my conscience tells me to do is often one consideration in my deliberation about how I ought to act in a given situation.

Here, I give an account of conscience that begins with the idea that what we seek to pick out when we use the term ‘conscience’ is some distinct part of our moral psychology. On this view, claims about conscience must square with what we know (or with our best understanding) of psychology. As conscience is a part of our psychology, I will take one of the main desiderata for an account of conscience to be fidelity to the way we actually experience conscience. To this end, I will argue that conscience is a mental process that produces dictates by comparing actions to an agent’s set of internalized moral norms. I will begin with a brief discussion and critique of three alternative accounts of conscience from Joseph Butler, Peter Fuss, and William Lyons. Although each of these accounts tells us something important about the nature of conscience, I will give reasons for rejecting each of them. In brief, my criticisms are that Butler attributes far too much reflection to the activity of conscience, Fuss gets the scope of conscience wrong, and on Lyons’s account children and some adults end up not having consciences at all. I will then elaborate on what I take conscience to be, highlighting how my account avoids these problems.

II

Before proceeding, I want to draw attention to the phenomenon we aim to pick out with the term ‘conscience.’ Although there is much disagreement about what conscience is and the role it plays in our moral lives, there are several features that are widely agreed upon by most, if not all, theoretical accounts of conscience. I take these widely agreed upon features to loosely define the concept of conscience: a view that departs drastically from these features is describing not conscience but some other phenomenon. These theoretical constraints will be used to focus our phenomenological inquiry.

First, conscience is concerned with behavior: at a minimum, those behaviors that we ought *not* to engage in.⁹ It is not, by contrast, usually taken to be concerned with motives, emotions, or intentions. Second, at least one important concern of conscience (perhaps its sole concern) is with evaluating a *particular* behavior that is to take place in a *specific* situation, (e.g., I must not lie to Kate about her dress) rather than the evaluation of general principles (e.g., lying to avoid discomfort is wrong). Third, an agent’s conscience is concerned solely with her *own* actions, and not with the actions of others. When I make moral judgments about how *others* act, my conscience is not the source of these views. Further, the process of appealing to one’s conscience is distinct from appealing to external sources of moral guidance, such as reading Aristotle or asking a friend for advice. Finally, conscience is closely associated with self-disapproving feelings like guilt, remorse, and shame. On the most common picture, violating one’s conscience gives rise to such feelings.¹⁰

⁹All accounts grant this much; some accounts (including the one I will offer below) further hold that conscience can tell us, positively, that we ought to perform some action.

¹⁰On some accounts, the feelings of guilt and remorse are a constitutive part of conscience rather than a result of violating it. Cf. Broad, “Conscience and Conscientious Action”; Mill, *Utilitarianism*.

This is the extent of widely held common ground among moral philosophers. What other features can be ascribed to conscience, where an agent's conscience comes from, and the precise function of conscience all vary according to different conceptions.

A. Joseph Butler's account of conscience

One historically prominent account of conscience comes from Joseph Butler in his *Five Sermons*.¹¹ Butler defines conscience as the God-given faculty by which we reflect upon our principles, actions, and ourselves, and judge these to be either just, right, and good, or evil, wrong, and unjust. The judgment of conscience is limited to those actions that are actually under our power (i.e. it does not judge things that merely happen to us, or the unintended consequences of our actions), but whenever an individual reflects on such actions and approves or disapproves of them she is exercising her conscience as Butler understands it. The judgments of conscience contain a mix of both cognitive aspects ("sentiments of the understanding") and emotional aspects ("perceptions of the heart") and when exercised "in a cool hour," one's conscience is a highly reliable guide to moral truth (i.e. divine law). For Butler, conscience is synonymous with 'moral reason,' 'moral sense,' 'divine reason,' 'the principle of reflection' 'the moral faculty,' and 'reason.'

Butler holds that the faculty of conscience is "in kind and in nature supreme over all others";¹² and this superiority is a constitutive part of the idea of conscience itself. To show that conscience has this superiority, he points to the fact that those actions that the passions or appetites direct us toward are often not the actions that conscience approves of, such as when

¹¹Butler, *Five Sermons, Preached at the Rolls Chapel and A Dissertation upon the Nature of Virtue*.

¹²Butler. p. 38

fulfilling some appetite would require injuring another person. In such cases of conflict, it is not possible to contravene conscience without acting against our nature, whereas it is possible to act against a passion or an appetite while still acting in accord with one's nature. Further, we have a duty always to follow the dictates of conscience.¹³ Like the superiority of conscience, the requirement to act in accord with its dictates is simply part of what it *is* for that faculty to be the faculty of conscience according to Butler: any faculty that produces a dictate that an agent is not required to follow cannot be that agent's conscience. Importantly, this is not to suggest that agents always *in fact* act in accord with conscience. Even when an agent has deliberated correctly and concluded that she ought to act in a particular way, she may be swayed by a particularly strong passion or by self-love and so act in violation of her conscience. But such a violation, in Butler's view, is never justified.

Butler's account captures the common usage of conscience by which it is taken to be a deliberative process aimed at determining how we ought to act. He is correct, I believe, in arguing that conscience is concerned only with those actions that are under our power. His claim that the dictates of conscience are not purely cognitive but also have an affective aspect, is also on the right track. The experience of one's conscience dictating that one must not lie is qualitatively different from the purely cognitive experience of, for example, calculating the sum of two and two.

But Butler's account of conscience is unsatisfying on several counts. A first and somewhat minor issue: I do not want to take on Butler's religious commitments. For many agents, the dictates of conscience will implore adherence to religious values. However, even those who are not deeply religious and those who actively reject religion can be properly said to

¹³Butler. p. 44

have a conscience. And if conscience is “God-given,” it is so in the mundane way that our sense of sight or our capacity to feel pain can be said to be God-given. I say this is minor, though, as references to Butler’s theological view can be removed without fundamentally altering his account of conscience. (At least, there is a coherent account of conscience in the absence of these theological commitments.) Instead of holding that conscience is a God-given faculty, we can maintain that it is a mental faculty with some natural origin. And claiming that conscience tracks moral truth does not *eo ipso* require identifying moral truth with divine law as such.

A second and much more damning problem with Butler’s account is that the claim that conscience is a highly reliable (if not perfect) guide to moral truth does not square with the observation that conscience (as Butler describes it) in different agents gives diverging, often contradictory dictates.¹⁴ It is possible for Butler to explain some of this disagreement by noting that some agents are influenced by their passions or otherwise do not reflect in a sufficiently “cool hour.” When we consider things hastily or are too strongly influenced by our emotions, we are not properly exercising our conscience and our judgments are liable to error. But Butler’s claim is that when we reflect thoroughly and calmly, our judgments will reliably track moral truth. In fact, we can still point to plenty of disagreement among those who exercise conscience as Butler describes it in the best possible circumstances. Just consider the many questions regarding how we ought to act about which professional philosophers persistently disagree.¹⁵ If

¹⁴This objection relies on the assumption that moral truth is not agent-relative: that is, that two agents in relevantly similar circumstances are subject to the same moral requirements. As already noted, Butler himself understands moral truth as external to individual agents: for him it is the divine law issued by God.

¹⁵A few examples: should I eat meat or become a vegan? Should I commit suicide in order to escape the intractable pain of my terminal illness, or must I do my best to find meaning in the time I have remaining? How much of my income ought I to give to charity? It is of course worth noting that despite such disagreements, there are also many questions on which there is widespread agreement: most agents will judge that they ought not to kill another person in the majority of circumstances, that they should avoid lying, that they owe respect to fellow moral agents, and so on.

anyone has taken the time to reflect in a cool hour, surely they have. Butler's account does not seem able to explain such persisting disagreements. What is more, the dictates of a single agent's conscience can themselves conflict over time, further undermining the claim that conscience is a highly reliable guide to moral truth.¹⁶ To account for such disagreement, we need to maintain either that conscience does track moral truth but is susceptible to error, or else that it tracks something relative to the agent.¹⁷

Third, conscience is not reflective in the way that Butler makes it out to be. Although we do sometimes pause and reflect "in a cool hour" on the merits of the various actions available for us to perform, such cool reflection is not necessary for conscience to be active. This point was brought out in the foregoing introductory discussion. Consider also another, more routine example:

Brittany is sitting in a coffee shop studying when she notices that the woman sitting next to her has gotten up to leave without her wallet. Brittany reaches for the wallet, intending to keep it and whatever cash she finds inside. But as soon as she forms this intention, her conscience tells her she must not keep the wallet for herself.

Brittany does not reflect on what she ought to do; rather, she sees the wallet and immediately decides to keep it for herself. Despite her failure to engage in deliberation, her conscience is active and delivers a dictate. Conscience often, and perhaps most commonly, acts like this, without our conscious invocation. Merely considering performing some action of which conscience disapproves gives rise to what are often referred to as "pangs of conscience," even if one has not set out to reflect upon whether performing this action would be good or evil.

¹⁶ Fuss, "Conscience."

¹⁷In what follows I will take the latter approach.

Finally, I argue that conscience does not have the special kind of authority with which it is imbued by Butler. We have seen that conscience cannot be a highly reliable guide to moral truth, given facts about disagreement between agents. But then Butler's claims that conscience tracks our nature and so acting against it is a violation of our nature become implausible as well. The idea that there could be *any* mental faculty that we are duty-bound to always obey strikes me as strange. In any case, this authority is at least not commonly taken to be part of the *concept* of conscience, as there is abundant literature addressing the question of whether we must always act in accord with our consciences or not (some of which argues not¹⁸). Conscience does, however, *feel* authoritative. I will argue later that we can explain and understand this felt demandingness of the dictates of conscience without attributing any special authority to conscience itself.

B. Peter Fuss's account of conscience

Peter Fuss gives an account of conscience that avoids these problematic aspects of Butler's view, though it falls prey to problems of its own. Contrary to Butler, conscience on Fuss's view is not a process of reflection or deliberation. Rather, Fuss identifies conscience with "the disposition to integrate or harmonize moral knowledge or belief with the appropriate moral action."¹⁹ Conscience on this view produces only a single dictate when an agent must decide how she ought to act on some particular occasion: "Act in accordance with your moral knowledge or belief."²⁰ Thus, it provides only formal or procedural moral knowledge: that one ought to do what one believes is right. Conscience does not provide any substantive moral knowledge: it

¹⁸Cf. Candlish, "The Origins of Subjectivism"; Fotion, "On 'Conscience'"; Govier, "Is Conscientiousness Always - or Ever - a Virtue?"

¹⁹ Fuss, "Conscience." p. 116

²⁰Fuss. p. 117

does not tell us which actions or types of actions are right and which are wrong, and it does not tell us to perform or refrain from performing any particular actions. The role of conscience, according to Fuss, is simply to “establish a general sense of moral obligation in the individual’s consciousness.”²¹

Conscience, Fuss stresses, is not an affective faculty or disposition. He positions his account in part in opposition to that of Mill, for whom conscience is identified with “*a feeling in our own mind*; a pain, more or less intense, attendant on violation of duty.”²² So when he denies that conscience is an affective faculty, his aim is to reject the idea that conscience should be identified with feelings or emotions. Conscience does, however, give rise to feelings of personal integrity and self-esteem when an agent acts in accord with its dictates, and to feelings of personal disintegration and remorse when she violates those dictates.²³

Fuss likewise emphasizes that conscience is not a conative faculty or disposition:²⁴

that is, it does not as such move the agent to pursue this or that object of value or to perform this or that morally worthy act. However, it does constitute the disposition to integrate or harmonize moral knowledge or belief with the appropriate moral action.

He also describes the role of conscience as “to “enforce” our moral knowledge or belief with a tendency to act in accordance with what we know or believe.”²⁵ The best interpretation I can offer of these claims is to understand Fuss as making a distinction between being motivated to perform particular types of action (e.g., tell the truth) versus being motivated generally to act in

²¹Fuss. p. 116

²²Mill, *Utilitarianism*. p. 29

²³Fuss, “Conscience.” p. 116

²⁴Fuss. p. 116

²⁵Fuss. p. 118

accord with one's moral beliefs (i.e., do what I think is right). Conscience, then, provides only the latter, general type of motivation.

For Fuss, conscience tells us that we ought to act in accord with our moral beliefs (some of which, presumably, we come to hold as the result of reflection or deliberation). Which actions conscience endorses or censures, then, are entirely dependent on the current moral beliefs of the agent: conscience has no innate or socially determined content independent of these beliefs. Thus, it is not surprising on Fuss's account that what one individual is led to do by her conscience may conflict with how another individual is led to act, or that a single individual might be led by conscience to act in incompatible ways at distinct times: different people can and do have different moral beliefs, and a single agent's beliefs can change over time. Contrary to Butler's view, conscience on Fuss's account has no special authority. Rather, it is just a useful mechanism for enforcing our moral beliefs through our actions.

Although Fuss's account improves on Butler's in that it can account for conflicts between different agents, captures the experience of receiving conscience's dictates without engaging in reflection, and does not imbue conscience with an implausible authority, I will argue that it falls short because conscience does not always tell us to act in accord with our moral beliefs. Take the following example:

Andrew was raised as a Catholic, and was taught by his parents, religious leaders, and school teachers that engaging in sexual intercourse outside of a marital relationship is morally wrong. In high school when he considered having sex with his girlfriend, his conscience told him he must not do so. After Andrew moved out of his parents' house and started college, he began to question this teaching of the church. Through discussions with friends and classmates and personal reflection, Andrew concluded

that there is nothing problematic about consensual sex between unmarried people.

Despite this belief, which he readily espouses when asked and is prepared to give reasons in defense of, still when Andrew considers having sex with the woman he has been dating, his conscience tells him that he must not do so.

On Fuss's account, when Andrew endorses this norm – when he believes that sex before marriage is morally wrong – but is tempted to have premarital sex with his girlfriend, it is conscience that sanctions him. One day he comes to reject this belief, through deliberations about what reasons there are to refrain from premarital sex. But his felt opposition to actually engaging in premarital sex does not immediately vanish. If we want to retain our understanding of conscience as a particular psychological process, it is more plausible to maintain that it is still Andrew's conscience that sanctions this action than to argue that as soon as he comes to believe that there is nothing wrong with consensual premarital sex some other psychological process becomes the source of the opposition he feels.

Psychological processes take time to change. Compare, for example, accessing a muscle memory. A dancer decides to change a step in a dance that he has been performing for months. He can immediately tell you what the new sequence he has decided on is, but the tendency to go into the old sequence remains until he has put in sufficient, diligent practice to eliminate this tendency. Similarly, the mental process of conscience will tend to condemn actions that violate previously accepted moral beliefs for some time after an agent's moral beliefs change.

I take it that this kind of case, in which the moral beliefs that we endorse come apart from less reflective attitudes toward certain actions, occurs in myriad situations. The dictates of conscience can conflict with our beliefs because the former, I have claimed, are one piece of information from which we deliberate about how we ought to act, whereas the latter are at least

sometimes the product of such deliberation. Conscience does act as a kind of enforcement tool, but it is not (necessarily) tracking moral beliefs.

C. William Lyons's account of conscience

A third account of conscience comes from William Lyons. He describes conscience as an activity that consists in “the autonomous development of a reasonably coherent set of internalized, other-regarding moral values and action-guiding principles based on them, and a commitment to act on them as overriding.”²⁶ Merely having some set of other-regarding values and action-guiding principles, on Lyons's view, is not sufficient for an agent to have a conscience. Rather, the agent must have critically reflected on her values and principles, and subsequently made an active commitment to act on them above all other considerations.

This process of critically reflecting on and committing to norms that Lyons is interested in is described by Lawrence Kohlberg in his theory of moral development. On Kohlberg's view, moral development proceeds through six stages. The stages of moral development are individuated not by the content of the agent's moral beliefs, but by the type of reasoning engaged in to reach a moral judgment. The acquisition of new patterns of moral reasoning and movement through the stages of moral development are not the result of biological maturation, nor are they the result of socialization. Rather, Kohlberg holds that moral development occurs as a result of the agent encountering and thinking about moral problems. Part of this thinking can and does involve discussion with one's peers, teachers, parents, religious leaders, etc. But these discussions do not result in the agent taking on the moral beliefs or style of moral reasoning of the people she interacts with. Rather, they assist in moral development by providing a source of

²⁶Lyons, “Conscience - An Essay in Moral Psychology.” p. 493

disagreement that creates tension within the agent's own moral beliefs. The agent is then motivated to resolve this tension, and in doing so will eventually learn to reason about moral problems in accord with the next stage of moral development.²⁷

The first two stages demonstrate what Kohlberg calls "preconventional morality," because children at these stages are not operating as members of society but rather as isolated individuals. The next two stages demonstrate "conventional morality," in that children at these stages have taken on the perspective of society as a whole. This is demonstrated either by their believing that anyone in their society would make the same judgment, or by their believing that the judgment they have made is in the best interests of society as a whole. The final two stages Kohlberg considers to be "postconventional morality." Each of these stages involve reasoning about how society *ought* to be organized, rather than how society *is* organized.

The precise details of each stage are not so important for our purposes, nor is Kohlberg's insistence that everyone always progresses through each of these stages in order (although he does admit that different people reach different "final" stages; not everyone progresses to stage 5 or 6).²⁸ Rather, it is the progression from conventional morality to postconventional morality that Lyons takes to be crucial for the formation of one's conscience. An individual who has reached these stages of moral development has overcome "childhood egocentrism and seriously worries about the effects on others of one's own actions."²⁹ Lyons argues that these stages of moral development involve the agent "turning away from external authority of any sort as his or her moral guide, and beginning on the task of formulating his own moral values and principles,

²⁷Crain, "Kohlberg's Stages of Moral Development."

²⁸It is worth noting that objections have been raised about the precise details of Kohlberg's account, and to the male-centric orientation of the view, cf. Turiel, *The Development of Social Knowledge*; Gilligan, *In a Different Voice*.

²⁹Lyons, "Conscience - An Essay in Moral Psychology." p. 491

and then finally moulding them into a consistent moral point of view.”³⁰ This consistent moral point of view contains basic moral principles and values which the agent is prepared to adopt and act on. It is key that this process of developing one’s own moral point of view is, for Lyons, active rather than passive. Lyons argues that the norms with which conscience is concerned are not merely passively osmosed from our surroundings but the result of critical reflection using patterns of moral reasoning characteristic of a maturely developed moral agent.

The culmination of this process of assessing and then accepting or rejecting norms, for Lyons, is making a *commitment* to act on the norms the agent accepts. He argues that this commitment is what gives conscience its authority, in the sense of its “right to command and be obeyed.”³¹ Such a commitment in turn transforms the norms being committed to by the agent into a “part of their personality, part of their integrity as a person”³² such that not obeying one’s conscience would constitute a betrayal of oneself and one’s integrity. The “voice” of conscience, then, is affective: Lyons describes it as the experience of anxiety, guilt, shame, and remorse that result from violating one’s conscience.

In addition to being supported by available empirical data, the idea that in the course of normal moral development we at some point distance ourselves from the norms of our family and community in order to critically evaluate and then accept or reject such norms is supported by experience. This allows us to explain how our family and the community in which we are raised can shape the moral views we end up with while also making sense of the fact that some people depart drastically from the norms of their family or community.

³⁰ Lyons. p. 491

³¹ Lyons. p. 492

³² Lyons. p. 492

However, the process of actively evaluating and committing to norms that Lyons describes as a precondition to having a conscience, is, again, too intentional and reflective to capture the phenomenon that I argue we ought to be interested in. Further, if we take Lyons's view seriously then the bar for even having a conscience is extremely high. Children, even adolescents, who have not yet gone through this process of moral development have no conscience on his view. But this is implausible. Further, it is likely that some adults have engaged in very little if any critical reflection on and commitment to their values and action-guiding principles. Such people will then have only or primarily unevaluated norms that were merely internalized from some external source: family, religious leaders, friends, etc. On Lyons's view, therefore, they too fail to have a conscience. It is also almost certainly the case that each of us has *some* internalized norms that we have not critically examined. I suspect that Lyons would exclude these norms from the purview of conscience, on the ground that the agent has not "committed" to these in the necessary way and thus they lack the requisite authority and connection to an agent's personal integrity.

Here I want to depart from Lyons. Although he does not elaborate on what it means to "commit" to something, I take it that what he has in mind is a conscious decision to act in accordance with the norm in question that results from the active process of examining one's action-guiding values. While this kind of commitment to norms is doubtless important in certain ways, I do not think it can be necessary for the development of a conscience. Neither critical evaluation of nor commitment to a norm is required either to have a conscience or for some norm to be a part of the norms to which conscience appeals.

If I have correctly identified the role of conscience in the case of Andrew's opposition to pre-marital sex, in which an agent's conscience tells him to act in accord with a norm he

reflectively *rejects*, then it is clear that conscience can come apart from our moral commitments. But we don't need such a case to establish the possibility of conscience acting outside of our reflective moral commitments. Consider the following:

As a child, Claudia's parents never let her quit an activity once she had committed to participating in it. When she decided she hated ballet four weeks into her year-long program, they told her that she had to finish out all of the classes. When she signed up for a soap box derby but got frustrated with the difficulty of building the car, they told her that she would have to complete the race no matter how poorly her car turned out. And so on for each activity that Claudia started but did not want to finish. Now Claudia is grown and has recently joined a reading group. She isn't connecting with the other group members like she had hoped she would, and so she considers skipping the rest of the meetings. But her conscience tells her that she must continue with the reading group through the end of the current book.

Claudia *may* have identified, critically reflected on, and committed herself to the norm of finishing what one starts or fulfilling the commitments one has made. But I take it that it is equally plausible that she may *not* have engaged in any such reflection. She may have internalized this norm from her parents and continued acting in accord with it in her adult life without ever considering whether there is good reason to accept such a norm or not. And even in this latter case, it seems appropriate to say it is her *conscience* that tells her she must continue on with the book club.³³ But on Lyons's view, the demand that Claudia feels to continue attending

³³One may object that this case does not involve conscience because finishing what one has started is not a *moral* norm. I will argue later that conscience is appropriately concerned with cases such as Claudia's, even if we accept a view on which her decision is not a moral one. But in any case, the point is just that however plausible it is that conscience acts in the case in which Claudia has critically reflected on the norm "finish what you start", then it is equally plausible that conscience acts in the version of the case in which she has not reflected on this norm.

the meetings can only be ascribed to conscience if Claudia has actively committed to the norm. Should she drop out of her book club, Claudia will experience feelings of guilt about doing so either way. Again, I find it implausible to maintain that this felt obligation to continue on and this experience of guilt should she violate that obligation are generated by some other psychological process(es) before Claudia actively commits to “finishing what she has started” but then are produced by the mental process of conscience after such active commitment.

III

In the foregoing, I have argued that the operation of conscience does not require active reflection and is thus distinct from (though related to) the process of deliberation about how one should act. We experience conscience even in situations in which no deliberation about how to act takes place. From this, I will argue that conscience’s activity is not constituted by or constitutive of the process of deliberating about how one ought to act, and its dictates are not the product of such deliberation. The dictates of conscience factor into the process of deliberation about how to act, when they do, as inputs rather than outputs: they provide a sort of evidence that can be referenced and used in the process of deliberation.

I also argued above that conscience is not tracking anything external to the agent, such as moral truth. Instead, I will argue below that conscience is best understood as tracking something internal to the agent. This will allow us to make sense of the disagreement between the dictates of conscience amongst different agents as well as conflict within a single agent over time. I argued that the internal entities that conscience tracks cannot be moral beliefs, because the

dictates of conscience sometimes contradict an agent's moral beliefs.³⁴ I also argued that conscience is not limited to tracking values and principles that an agent has reflectively endorsed and committed to acting on.

I argue that we can make sense of all of the above features of conscience, while staying true to its phenomenal character, by understanding conscience as a mental process whose function is to attach 'to-be-doneness' or 'not-to-be-doneness' to a particular action, considered in a specific circumstance. Conscience operates by assessing an action in light of an agent's set of internalized norms.³⁵ Conscience gives rise to a dictate whenever the action under consideration falls under the scope of some of our internalized norms. When conscience recognizes that the action under consideration, ϕ , is required by these norms, it gives rise to a dictate whose content is "I must ϕ "; when it recognizes that the action is forbidden by these norms, it gives rise to a dictate whose content is "I must *not* ϕ ." If none of the norms accepted by the agent cover the action in question, then conscience is silent.

It is possible to deliberately consult one's conscience, but conscience is spontaneous and non-voluntary in the sense that such intentional consultation is not necessary to activate it. Conscience is active whenever we consider acting in a particular way within a specified circumstance, where what is required to 'consider' an action in the relevant way is extremely minimal. Forming an intention to perform an action is not necessary for conscience to be active: it is enough to recognize some action as a genuine option for me, or to imagine that an action is

³⁴Alternatively, one may want to hold that conscience does track moral beliefs, it just does so unreliably, with some errors. In the absence of a plausible alternative, this suggestion would be appealing. However, I will argue below that there is a different type of mental entity that conscience does reliably track (internalized norms), and that the relationship between internalized norms and moral beliefs explains why the dictates of conscience do not always accord with an agent's moral beliefs.

³⁵More precisely, conscience operates only over those internalized norms which an agent takes to be moral standards, as I will explain below.

such an option (as I asked the reader to do in the introduction of this chapter). It is not necessary that the agent deliberate about how to act, or even that she identify some alternative (actual or imagined) possible action.

Furthermore, conscience is inevitable in the sense that we often cannot consciously suppress its action. Even if I want to ignore the fact that stealing goes against my internalized norms, my conscience will give rise to the seeming “I must not steal” when I consider taking the fifty-dollar bill that someone dropped right in front of me. The dictates that conscience produces are consciously accessible, but the process by which conscience compares potential actions to one’s accepted norms is opaque to introspection. Its dictates are experienced as given to us, rather than arrived at by us. This is further reason to maintain that the action of conscience is separate from the process of deliberating about how to act.

In these ways, the operation of conscience is roughly analogous to breathing. If you think about it, you can control when you inhale and exhale. But we all continue breathing when our attention is focused elsewhere, thanks to spontaneous input from the brainstem to the diaphragm. And while you can intentionally stop breathing for some time, eventually your impulse to breathe will override your attempt to hold your breath.

The dictates of conscience are experienced as being given to us, rather than being arrived at or decided on by us. In this way, they differ from the conclusions that we arrive at through deliberation. We can introspectively consider what our conscience tells us, but the dictates of conscience are not the result of a process of introspective deliberation

These observations suggest that conscience can usefully be thought of as what psychologists term a ‘Type 1’ process, or (equivalently) as a part of what they call ‘System 1’. In contrast, deliberating about how one ought to act can be thought of as a Type 2 process, or

(equivalently), as a part of System 2. System 1, as characterized by Daniel Kahneman,³⁶ is responsible for “fast thinking,” whereas System 2 is responsible for “slow thinking.” Some examples of the mental processes that are a part of System 1 are reading in one’s native language, forming impressions of people we meet in passing, and jerking one’s head to localize a sudden loud noise. System 2 processes include conducting complicated mathematical calculations, sounding out words when reading aloud in a language in which we are not fluent, and reasoning about how best to organize all the errands that need to get done today. The processes of System 1 operate “automatically and quickly, with little or no effort and no sense of voluntary control.”³⁷ Much of the workings of System 1 processes are hidden from our conscious experience.

In contrast, System 2 processes require attention and effort to execute, may involve following rules or ordered steps, and “are often associated with the subjective experience of agency, choice, and concentration.”³⁸ Further, Kahneman claims that the “I” we identify with is our System 2: “the conscious, reasoning self that has beliefs, makes choices, and decides what to think about and what to do.”³⁹ System 1 includes innate skills as well as learned processes that have become automatic over time. It contains learned associations between ideas, is able to detect simple relations, and is good at integrating information about a single thing. Unlike System 1, System 2 is able to “follow rules, compare objects on several attributes, and make deliberate choices between options.”⁴⁰

³⁶Kahneman, *Thinking, Fast and Slow*.

³⁷Kahneman. p. 20

³⁸Kahneman. p. 21

³⁹Kahneman. p. 21

⁴⁰Kahneman. p. 36

Both systems are active any time we are awake, according to Kahneman. But much of our daily activity is governed by System 1, with only minimal energy allocated to System 2, as we go through the motions of familiar activities and engage with the world in unsurprising ways. When we encounter some problem or task that System 1 is not equipped to solve (e.g., parallel parking in a tight spot), more effort becomes directed toward System 2. The two systems are not isolated from one another: System 1, Kahneman writes, “continuously generates suggestions for System 2: impressions, intuitions, intentions, and feelings. If endorsed by System 2, impressions and intuitions turn into beliefs, and impulses turn into voluntary actions.”⁴¹ System 2 can (with effort) override the normal activity of System 1 in some cases (e.g., when we are instructed to say the color of a written word instead of the word itself). But System 2 cannot always override System 1. It cannot, for example, make the lines in a Müller-Lyon illusion appear to be the same length, even by demonstrating via measurement that they are. System 2 can also, over time, change the way that System 1 works by programming in new functions (e.g., learning to play a musical instrument).

We should understand the mental process of conscience, I argue, as part of System 1. Conscience as I have described it functions by comparing whatever action an agent considers performing to that agent’s set of internalized norms. To do this, conscience must first integrate information about that action and then make associations between that action, so understood, and the norms an agent has internalized, to detect the relationship between the action and those norms. I have claimed that conscience operates automatically (spontaneously) and that we are unable to suppress its actions, as is characteristic of System 1 processes (Kahneman gives the

⁴¹Kahneman. p. 24

example of being unable to hear a simple sentence spoken in one's native language without understanding its meaning).

The dictates of conscience, like the 'suggestions' generated by System 1 processes, figure into the System 2 process of deliberation about how we ought to act in a given circumstance. Recall that Kahneman claims we identify *ourselves* with System 2. Then the fact that the dictates of conscience are products of System 1, something in some sense *other*, makes sense of the common description of conscience as a voice that speaks to us (not our own voice), and of the dictates of conscience as being something that we are *told*, not as something that we tell ourselves. The System 2 process of deliberating about how we ought to act can partially override the System 1 process of conscience, in that it can lead us to accept conclusions that contradict the dictates of conscience. But it cannot completely silence conscience: it cannot prevent it from producing dictates nor can it completely opt out of the guilt and remorse that come from violating one's conscience.

And, our deliberative processes can, over time, reprogram conscience insofar as they can lead us to internalize new norms or reject previously internalized norms. Having reflectively accepted a new moral norm, an agent can come to internalize that norm over time in the same sorts of ways she would develop a new habit: at first she will need to consciously apply the norm to situations in which it seems relevant, and make an effort to reflect on and judge her actions in light of the new norm: praising herself when she acts in accord with it, and blaming herself for violating it. Through this kind of habituation, the norm can come to be incorporated into her System 1 psychology such that her conscience automatically evaluates actions according to that norm without requiring effortful deliberation.

An agent's conscience, on this account, compares actions to her set of internalized norms. To clarify by way of illustration what it means for a norm to be internalized in the way that is relevant for conscience, consider Gilbert Ryle's account of what it is to have a moral conviction.⁴² Ryle argues that to have a moral conviction is "to know or be convinced that some general proposition is true or that some universal imperative is right, or wise."⁴³ He offers five public tests that an agent has such a moral conviction:⁴⁴

- (1) *That he utters it regularly, relevantly and without hesitation.*
- (2) *That other things which he says regularly, relevantly, and unhesitatingly, presuppose it.*
- (3) *That he is ready or eager to try to persuade other people of it and to dissuade them of what is inconsistent with it.*
- (4) *That he regularly and readily behaves in accordance with it, on occasions when it is relevant.*
- (5) *That when he does not behave in accordance with it, he feels guilty, resolves to reform, etc.*

Tests (1) and (2) show that the agent intellectually accepts the principle, (3) shows that he admires or respects the principle, and (4) and (5) show something like that the agent embodies that principle (e.g., that the agent *is honest*). Ryle says that for an agent to have a moral conviction "to an operant degree," that conviction must manifest "in the disposition to behave—in *all* sorts of behavior, including 'thinking'—in accordance with the principle which is said to be known or accepted."⁴⁵ That is, I take it, she must meet all of these public tests, and, further, the principle must figure into her private thoughts in roughly analogous ways.⁴⁶

⁴²For Ryle, conscience just *is* having moral convictions "to an operant degree, i.e., being disposed to behave accordingly." Ryle, "Conscience and Moral Convictions." p. 35

⁴³Ryle. p. 32

⁴⁴Ryle. p. 43

⁴⁵Ryle. p. 34

⁴⁶It seems implausible to hold that an agent necessarily must meet each of the requirements (1)-(5) in order to have a moral conviction to an operant degree. In particular, I think it likely that there are some people who are so

I have argued that intellectual acceptance of a norm can and sometimes does come apart from the kind of internalization relevant for conscience. Intellectually accepting a norm, such as is described by Ryle's tests (1) and (2), is neither sufficient nor necessary for that norm to be internalized in the way relevant for conscience on my account. What is required is something closer to the behaviors described in Ryle's tests (4) and (5). Having internalized a norm requires, roughly, that an agent be disposed to act in accordance with the norm and to form judgments of herself and others on the basis of their compliance with or disregard for the norm. Ultimately, what it is to have internalized a norm is for that norm to play a certain kind of role in our cognitive economy. Internalized norms are a part of our System 1 psychology: there are readily accessible to System 1 processes without effort or attention required on the part of the agent. The tests that Ryle describes pick out a cluster of roles that internalized norms play. They give a sense of what it is to have internalized a norm under standard conditions. But no single condition must necessarily be met for some norm to count as internalized.

As already noted, acting against the dictates of one's conscience produces negative self-regarding feelings such as guilt, shame, and remorse. This is because what it *is* to have internalized a norm is, partly, to be disposed to experience these negative feelings if and when one is (perhaps only subconsciously) aware of having violated it.

Norms can come to be internalized like this in at least two ways. Some norms we internalize passively, through repeated exposure and normal processes of socialization. This is especially common during childhood, when we internalize norms from our parents, teachers, religious leaders, etc. But we also do this as adults, especially when taking on a new role or

constituted that they never, or very rarely, try to persuade people of the principles that they hold – because, for example, they are very shy and insecure. Although perhaps Ryle would maintain that this person is *disposed* to engage in such persuasion, but is prevented from doing so by her insecurity or what have you.

entering a new social situation. We can call norms that we internalize in this way *merely internalized* norms. We may never have considered explicitly some of our merely internalized norms (e.g., we may never have said to ourselves “leaving work earlier than the boss shows lack of dedication”). Merely internalized norms may or may not be intellectually accepted.

Some of our internalized norms are the result of the kind of developmental process posited by Kohlberg and taken on by Lyons, discussed in the previous section. We sometimes critically reflect on the norms we have internalized, evaluating and then either endorsing or rejecting them. The norms that result from this process will all be norms that we intellectually accept. A norm that was already internalized and is subsequently endorsed will remain internalized. A norm that was previously not internalized but comes to be endorsed will take some time to become internalized in the sense relevant for conscience. Similarly, a norm that was previously internalized and subsequently rejected will, in most cases, remain internalized for some period of time. Some such norms can be expunged from our psychology, with effort. Others may be so deeply rooted that we can never completely rid ourselves of them.⁴⁷

Actions are compared to all the types of internalized norms, regardless of the process by which they came to be internalized, by an agent’s conscience. Thus, the set of norms that conscience appeals to will, for most agents, contain a mix of merely internalized and reflectively internalized norms, and may even contain some norms that she reflectively rejects.

There is a further question about the content of the internalized norms to which conscience appeals. Conscience (at least for the majority of people) is silent about such subjects as grammar or arithmetic, even for those agents who know and adhere to the norms of these

⁴⁷Analogously: I can come to believe that my fear of cockroaches is irrational, misplaced, unhelpful, etc., but merely coming to believe this does not do much to rid me of that fear. I must put in a good amount of work to dampen it, and I may never be able to completely rid myself of this fear.

subjects. Grammar and arithmetic, that is, are outside of the scope of conscience. The scope of actions governed by an agent's conscience is limited to those actions governed by moral norms. More precisely, the set of norms to which conscience appeals is determined by what an agent *takes to be* moral norms, rather than by what norms count as "moral" according to some impersonal, objective standard. Which norms are relevant for any individual agent's conscience will thus depend on that agent's own particular psychology. If an agent holds an internalized norm as a moral standard of conduct for herself, then for her they will be part of the set of norms to which conscience compares her actions. The norms of arithmetic or grammar are not taken by anyone to be moral standards, and so are not part of the set of norms that conscience accesses. The norms of etiquette or religious norms, in contrast, are more frequently, but not universally, taken to be moral standards. So agents who have not internalized the norms of etiquette or religion as moral norms will not find that their conscience reacts to actions that are required or forbidden by such norms, whereas those who do view such norms as moral standards will find that conscience sanctions their violation.

For example, some (not obviously moral) religious norms can and do enter into the mental process of conscience for some agents, such as the requirement to keep kosher in Judaism, or to refrain from premarital sex in Catholicism. Additionally, at least some norms of etiquette can also be proper objects of conscience. When I realize it has been two weeks since I received a gift from my grandmother and I have yet to send her a thank you note, my conscience censures me (even if I have expressed gratitude to her in informal ways). In contrast, nearly everyone takes the prohibition against killing to be a moral standard; this explains why nearly everyone's conscience is concerned with this prohibition.⁴⁸

⁴⁸Here forward, the term "internalized moral norm" should be understood as relative to the agent, in that it picks out whatever norms she takes to be moral, as explained here.

IV

In the last part of this chapter, I want to highlight one way in which having a conscience on the account I have given can be valuable. Conscience, I have argued, produces dictates spontaneously and inevitably whenever we consider performing an action that is either required by or forbidden by our internalized moral norms. No reflection on our actions or deliberation about how we ought to act is necessary in order for conscience to be active. These features allow conscience to guide our behavior when there is no time for deliberation or when deliberation is beyond the agent. Deliberation may be beyond the agent in that she does not know *what* to think: she is either at a loss as to what the relevant considerations are in the circumstances she faces or she is aware of the relevant considerations but cannot determine how they should be weighed to support one course of action over the other.

In this way, conscience is a judgment heuristic. In their seminal 1974 paper “Judgment under Uncertainty: Heuristics and Biases,” Amos Tversky and Daniel Kahneman describe evidence that “people rely on a limited number of heuristic principles which reduce the complex tasks of assessing probabilities and predicting values to simpler judgmental operations.”⁴⁹ These heuristics are “highly economical and usually effective, but they lead to systematic and predictable errors.”⁵⁰

One example is the heuristic Tversky and Kahneman term “availability,” according to which people evaluate the frequency or probability of some occurrence by appeal to how easily

⁴⁹Tversky and Kahneman, “Judgment under Uncertainty.” p. 1124

⁵⁰Tversky and Kahneman. p. 1131

they can think of instances or occurrences of the kind.⁵¹ This is generally a useful approach since instances of larger classes are typically recalled more easily than instances of smaller classes. However, the correlation between ease of recall and size of a class is not perfect, and ease of recall is also correlated with factors that have little or nothing to do with the size of a class. For example, increased familiarity with some event or object will make its occurrence or existence more easily retrievable. The more salient an instance is the more easily retrievable it will be (e.g., personally witnessing an accident has more salience than reading about it in a newspaper). Similarly, people will judge a class of events to occur with higher frequency the more easily imaginable instances of that class are. Tversky and Kahneman write, “The risk involved in an adventurous expedition, for example, is evaluated by imagining contingencies with which the expedition is not equipped to cope. If many such difficulties are vividly portrayed, the expedition can be made to appear exceedingly dangerous, although the ease with which disasters are imagined need not reflect their actual likelihood.”⁵² Thus those who use the availability heuristic to estimate the frequency of classes will systematically over- or underestimate the actual frequency in predictable ways.

I suggest that conscience, too, can be understood as a heuristic that substitutes the question “what is required by my internalized moral norms?” for the question “how should I act?” Our System 1 has easy, automatic access to our internalized moral norms and is therefore well situated to quickly and effortlessly answer the first question. On this picture, the dictates of conscience can be thought of as answers to the question “what is required by my internalized moral norms?” But as we have seen, what our internalized moral norms require of us is not

⁵¹Tversky and Kahneman. p. 1127

⁵²Tversky and Kahneman. p. 1128

invariably correlated with how we believe we should act, all things considered. Answers to this question are given by the all-things-considered judgments that result from deliberation, a process that is largely guided by System 2. Like other heuristics, though, in many cases conscience will give us the same answer as deliberation without requiring the time and effort characteristic of the latter process.

The spontaneous, effortless action of conscience also allows it to act as a sort of alarm or early warning system in situations in which further deliberation is possible. Experiencing a dictate of conscience alerts an agent to the fact that something is at stake in the situation in which she finds herself, that how she chooses to act may support or undermine one or more of her internalized norms. Conscience provides such an alert even in situations in which we had not previously consciously recognized that something important may be at stake. Thus, the promptings of conscience can lead an agent to pause and reflect on how she ought to act. Its promptings can also lead an agent to reconsider when she has already deliberated and reached an initial judgment.

This value of having a conscience is independent from whether or not an agent acts in accord with the dictates of her conscience. It is still valuable to have a conscience to alert you to the fact that some considered action is required or forbidden by your internalized moral norms, even if being so alerted does not lead you to act in accordance with these norms. This value of conscience is further independent from whether or not conscience leads an agent to act in ways that are *objectively* morally right, and from whether or not conscience leads her to act in ways that benefit society (should these two come apart).

This is because conscience prompts us to think about how we act. Hannah Arendt argues that evil in the world can be attributed to lack of thinking. She holds that thinking itself,

regardless of what one thinks about, functions to prevent people from doing evil.⁵³ The essence of thinking, for Arendt, is “the two-in-one”: thinking is having a silent conversation with yourself, with your own inner interlocuter. In order to be capable of thinking, one must possess consciousness in the sense of self-awareness, but thinking is not the same thing as consciousness. Thinking is “the specifically human actualization of consciousness”⁵⁴ that occurs when we are alone with ourselves. Thinking guards against evil, Arendt argues, because “the partner who comes to life when you are alert and alone is the only one from whom you can never get away—except by ceasing to think.”⁵⁵ That is, we must be able to justify our actions to ourselves or else “make it impossible for the two-in-one to be friends and live in harmony.”⁵⁶ Thinking is what, for Arendt, allows us to tell right from wrong, which in turn prevents us from doing evil.

Conscience, then, by alerting us that some of our internalized moral norms may be at stake, prompts us to think about the choices we face and the actions we might choose. The self to whom we must be accountable, as Arendt describes it, should be understood as distinct from the voice of conscience. In Kahneman’s language, it is our System 2. Engaging in reflection and deliberation about how we ought to act is the mechanism by which we justify our actions to ourselves. This explains how we can and sometimes do justify to ourselves acting against the dictates of our conscience. Of course, conscience’s prompting of further deliberation may not lead the agent to act any differently than she would have in the absence of conscience (let alone prompt her to act rightly). The value in reflecting on how one ought to act, however, is not

⁵³ Arendt, “The Two-in-One.” p. 180

⁵⁴ Arendt. p. 187

⁵⁵ Arendt. p. 188

⁵⁶ Arendt. p. 191

merely the instrumental value of potentially improving outcomes. Rather, reflecting on how one ought to act is in itself valuable.

V

I have argued that we should understand conscience as a mental process that is a part of our System 1 psychology. Conscience produces dictates by assessing our considered actions in light of our internalized moral norms, producing a dictate whose content is “I must (not) ϕ ” according to whether the agent’s norms forbid or require it. Because every individual agent is fallible, there is no guarantee that her internalized moral norms will track anything that might be considered objective moral truth, or even that they will track her all-things-considered moral judgments. Thus, one’s conscience is not necessarily a reliable guide to morally right action.

The dictates of conscience are one piece of information—important but not infallible—that enters into an agent’s deliberation about how she ought to act, and are distinct from the *judgments* that result from such deliberation. Thus, our judgments about how we ought to act can and sometimes do contradict what conscience tells us to do. Because of this, conscience is also not an infallible guide to acting in ways that an individual agent would always endorse.

An important value of having a conscience, on the account I have given, is its use as a moral heuristic. Conscience produces dictates without any conscious deliberation by the agent, and so can quickly provide information about what our internalized moral norms require in a situation. This is especially useful in situations in which there is little time to deliberate and in cases in which deliberation does not uncover a clear judgment about how we should act. In cases in which she is not pressed for time, recognizing that her conscience has something to say about

a considered action can also prompt an agent to pause and reflect further on how she ought to act.

CHAPTER TWO: MORAL EVALUATION OF OTHERS' CONSCIENCE-BASED ACTIONS

I

In the previous chapter, I argued that we can usefully think of the mental process of conscience as a part of what psychologists call our “System 1” that produces dictates by comparing considered actions to an agent’s internalized moral norms. Conscience as I described it operates quickly and automatically, and is outside of our voluntary control. A norm counts as *internalized* in the way relevant for conscience if it plays the right kind of role in an agent’s cognitive economy: roughly, if that agent is disposed to act in accordance with the norm and to form judgments of herself and others on the basis of their compliance with or disregard for that norm. The internalized norms to which an agent’s conscience appeals are *moral* norms in the sense that they are those norms which the individual agent *takes to be* moral standards of action for herself (not, necessarily, in any more robustly objective sense of ‘moral’). This conception of conscience has two important implications: one, the dictates of conscience do not necessarily track any objective standard of morality, and two, they can and sometimes do conflict with the agent’s own reflective judgments about what morality requires of her.

Despite these potential errors, I argued that having a conscience is valuable to an agent as a kind of moral heuristic. That is, because conscience operates automatically, quickly producing dictates without requiring effortful input from the agent, it provides her with reliable though imperfect moral action-guidance. And, although an agent’s conscience is subject to the kind of errors described above, for most people most of the time conscience accurately represents one’s own reflectively endorsed moral views. How frequently the dictates of an agent’s conscience

capture objective moral truths will depend in turn on how close her set of internalized moral norms is to the correct moral principles. Experience suggests, though, that most agents have internalized many of those moral norms for which there is broad consensus. Almost every (normal, adult) agent has an internalized moral norm that prohibits murder, for example. So, while it is conceptually important to recognize the limitations of this mental process of conscience as a guide to moral action, in doing so we should not lose sight of its value.

In this chapter, I will turn to a discussion of the relationship between conscience and our moral evaluation of agents and the actions they perform. First, I will discuss the ways in which the fact that an agent's conscience requires (or forbids) her performing a given action affects whether we judge her to have acted rightly or wrongly in performing that action. I will reject views on which the *only* relevant factor in evaluating right action is the presence or absence of a dictate of conscience, along with positions on the opposite extreme which hold that the mental process of conscience is completely irrelevant to the moral permissibility of actions. Instead, I will endorse a middle ground position, holding that conscience's dictates are relevant but not overridingly so to the determination of whether an agent acted rightly.

Some philosophers recognize that acting in accord with one's conscience may lead an agent to perform morally wrong actions and still maintain that agents ought always to act on their consciences. In the second part of this chapter, I will discuss this apparent paradox, argue that an agent should sometimes violate her conscience, and discuss what I take to be the proper role of conscience in moral deliberation and decision-making, along with the responsibility agents have to develop their consciences. Finally, I will discuss why and to what extent there is something morally admirable or praiseworthy about acting on one's conscience, even when we judge that an agent performed a wrong action in so doing.

II

In this section I will explore how the fact that an agent is motivated to perform some action by her conscience affects our moral evaluation of her performance of that action. Any actual action we would like to evaluate is performed by some particular agent in a specific context. We can represent this by saying that some action, ϕ , is performed by an agent A , in context c . One part of the context c in which A ϕ 's, then, is the presence (or absence) of a dictate from her conscience demanding or forbidding that she ϕ . The question that I take up in this section is whether and to what extent the presence of a dictate from A 's conscience affects the moral permissibility of A 's ϕ -ing in c .⁵⁷

Broadly, there are three logically possible positions on the relevance of conscience to the moral evaluation of actions: (1) the *only* relevant factor in moral evaluation of an action is whether it was required or forbidden by the conscience of the agent who performed it; (2) proclamations of conscience are relevant to the moral evaluation of an action at least sometimes, but other factors also affect the moral status of actions; or (3) the dictates of an agent's conscience never have any bearing on our moral evaluation of her actions.

First consider views described by position (1). Take some action, ϕ . On these views, an agent acts rightly just in case she acts in accord with the dictates of her conscience.⁵⁸ It follows on such a position that two agents who find themselves in identical situations would be morally

⁵⁷I am skeptical that we can ever evaluate action types in complete isolation from the context in which they are performed. I am skeptical, that is, of statements like "lying is always morally wrong." If there are some action types which are intrinsically wrong or intrinsically right independent of any further information about the circumstances in which they are performed, it is clear that conscience (as a feature of those circumstances) is not relevant to their moral evaluation. But as long as one accepts that the features of the context in which an action is performed are *sometimes* relevant to the evaluation of actions, the question arises whether and to what extent the dictates of the conscience of the agent who performs the action under evaluation are relevant to its moral permissibility.

⁵⁸For completeness, it should be mentioned that a view that holds the converse is also possible – that an action is wrong just in case it accords with the conscience of the agent who performs it, and so on and so forth.

required to act in different ways just in case their consciences provided them with conflicting dictates, even if they were otherwise as similar to one another as is consistent with their having such divergent consciences.

For example, consider two physicians working in a jurisdiction in which medical aid-in-dying is legal. Each of these physicians has a terminally ill patient capable of making her own decisions who requests that the physician write her a prescription for a lethal dose of medication, which she will self-administer. Dr. Jones's conscience tells her that she is required to write the prescription in order to relieve her patient's suffering, whereas Dr. Smith's conscience tells him that he is forbidden from writing the prescription in order to refrain from causing his patient's death. On the views described by position (1), writing the prescription is morally right in Dr. Jones's case but is morally wrong in Dr. Smith's case. Importantly, this is not simply a judgment about the goodness of their motivations or reasons. It is not, that is, a claim that Dr. Smith did the right thing for the wrong reasons and so ought to be criticized. Rather, the very same *action* performed in circumstances that are identical save for the conscience of the agent who performs it is judged to be morally right in the case in which her conscience requires so acting, and morally wrong in the case in which his conscience forbids so acting.

The most plausible version of position (1) appeals to an account of conscience as infallible: as always correctly determining one's moral obligations. This is close to Butler's view, discussed in the previous chapter, of conscience as a God-given faculty that is highly reliable as a guide to divine truth (at least when it is exercised carefully). As already noted, however, conflicts between the dictates of conscience experienced by different agents give us good reason to reject the idea that each individual's conscience reliably identifies an objective

moral truth external to that agent. On my account, an agent's conscience will only correctly identify her moral obligations to the extent that she has internalized the correct moral norms.

Instead of holding that conscience reliably *determines* one's moral obligations, position (1) might instead involve maintaining that the fact that an agent's conscience pronounces an action required *makes it the case that* that action is morally required of her. This is the position defended by William Davis, who understands conscience as moral intuition, the source of our moral knowledge, and the "sole and final judge of value."⁵⁹ Davis argues that within the realm of morality, seeming constitutes being such that "a strong feeling that I ought not to do something *makes it true* that I ought not to do it."⁶⁰

But this too is completely implausible on my account of conscience as a mental process that tracks an agent's internalized moral norms. If actions are required or prohibited solely on the basis of the *outputs* (i.e. dictates) of an agent's conscience, moral evaluation of the *inputs* (i.e. internalized moral norms) of conscience becomes extraneous. But we do, in fact, evaluate our own moral norms as well as the moral norms of others, endorsing some and rejecting others. If something like Davis's position is correct, then either there can be no evaluation of moral norms or else such evaluation is completely disjoint from the evaluation of actions performed on the basis of those norms. Neither of these options is compelling.

Whatever else conscience is, it is a part of our moral psychology. The fact that some part of an agent's moral psychology tells her she ought to act in some way does not confer moral rightness onto that action. Some agents have consciences that lead them to act in ways that are morally reprehensible, and while the fact that someone has acted on her conscience may be

⁵⁹Davis, "The Authority of the Moral Sense." p. 118, emphasis mine.

⁶⁰Davis. p. 116

relevant to our evaluation of her as a person and of the actions she performed in ways that I will discuss below, it is neither the case that conscience confers moral rightness onto actions nor that accordance with conscience is the sole standard of moral rightness.

Occupying the opposite pole of logical space are views described by position (3), which holds that the dictates of an agent's conscience have no bearing whatever on the moral evaluation of her actions. That is, we can determine whether and the extent to which an agent acted rightly or wrongly in any situation without knowing if her conscience pronounced on her actions or what it demanded of her. Adding this information would never change the moral calculus; whether or not an agent acts rightly is not affected by whether she acts in accord with the dictates of her conscience.

This extreme, like position (1), should be rejected. Two features of conscience are relevant to the moral evaluation of actions: (A) the consequences of violating one's conscience, and (B) the sense of obligation generated by conscience. Begin with (A): An agent who violates the dictates of her conscience can expect to suffer guilt, remorse, and internal disharmony. The experience of guilt, remorse, or internal disharmony is a form of psychological suffering. In general, suffering is bad for the agent who suffers. The fact that an agent would suffer in these ways as a result of ϕ -ing may in some cases make the difference between ϕ -ing being morally required and ϕ -ing being merely permissible for her in the circumstances at hand. This is so in a way roughly analogous to the way in which duties of rescue (i.e. moral requirements to render assistance to others) may be limited by the potential harm or risk of harm to the agent who finds herself in a position to help. A very good swimmer may be morally required to jump into a river to save someone who is drowning, whereas a weak swimmer may be exempted from this requirement by the risk that doing so poses to her life. Similarly, the fact that for one agent ϕ -ing

would require violating her conscience and thereby would expose her to psychological pain may exempt her from a requirement that applies to agents in otherwise similar circumstances whose consciences do not forbid (or perhaps require) their ϕ -ing.

Consider a woman who made a promise to her brother after he received a life-saving blood transfusion that she would donate blood to a local blood bank twice a year from then on, to honor him and to help others who need transfusions. Suppose that this person subsequently joins the Church of Latter-Day Saints and becomes convinced that donating blood is morally prohibited for her. Were she to keep her promise by continuing to donate blood, she would violate her conscience and so suffer significant guilt and psychological discord. This fact – that keeping her promise would require her to take on these significant negative consequences – may justify her in not keeping her promise. In contrast, someone who could keep this promise without violating her conscience and so would not suffer in this way would not be similarly justified in discontinuing the promised donations.

If this is right, then at least in some cases conscience affects the moral permissibility of an action by virtue of the negative psychological effects produced by its violation. Of course, in many other cases, these consequences of violating one's conscience will be sufficiently negligible so as not to make a difference: that is, sometimes an agent is morally required to act in a way that violates her conscience. And in some cases, the psychological consequences of violating one's conscience are not just *negligible* compared to what is at stake, but instead are completely irrelevant. It would be wrong for me to murder an innocent person, and I would feel guilty about doing so. But the fact that my guilt causes me suffering is not one of the features that makes it wrong for me to commit the murder.⁶¹

⁶¹On views on which it is *good* when agents who have acted wrongly experience suffering, the guilt that I experience as a result of committing murder is a good consequence. But it seems to me that the fact that my

All of this is just to say that the guilt, remorse, and psychological discord that the violation of conscience gives rise to are relevant to moral evaluation in just the same way that the effects of an action on the psychological well-being of the agent who performs that action are relevant to its moral evaluation generally, whatever the source of those effects. When it comes to the moral permissibility of actions, these psychological effects are relevant in some cases and irrelevant in others. In some of the cases in which they are relevant, they may release an agent from an obligation to which she would otherwise be subject.⁶² This is one way in which conscience can affect the moral evaluation of actions.

Turning to (B): Conscience is responsible for generating an agent's sense of moral obligation, which it attaches to specific actions by producing dictates that demand that an agent perform or refrain from performing that action. This sense of obligation is connected to an agent's motivations in acting. When she chooses to violate her conscience, she fails to be motivated by her sense of obligation (or, at least, is more strongly motivated by something other than obligation). Acting in accord with the dictates of one's conscience, in contrast, is compatible with (though it does not guarantee⁶³) being motivated by one's sense of obligation. When an agent is motivated by her sense of obligation, this often positively affects our moral evaluation of her action.

In many cases, the motivation with which an agent acts is relevant to the determination of whether she acts rightly or wrongly. I think that the case outlined above of physician aid-in-

committing murder has produced this good consequence does not just fail to outweigh the bad consequences of my action, it does not count at all in the moral calculus.

⁶²An agent may, however, always choose to take on suffering for herself when doing so does not harm others. That is, while the negative psychological effects of violating her conscience may release an agent from some particular moral obligation, these negative effects will not themselves render an action impermissible.

⁶³Sometimes what we feel obligated to do coincides with what is in our self-interest. In such cases, we may act in accord with our obligations but be primarily motivated by self-interest.

dying is such an instance. Stipulate that it is permissible to provide a patient with a prescription for a lethal dose of medication when certain conditions are met: when the patient is terminally ill, retains decisional capacity, voluntarily requests such a prescription, and has exhausted all other options to end her suffering. Within these circumstances, the motivation of the prescribing physician can make a difference to the moral permissibility of fulfilling the patient's request. That is, being motivated in some ways (by hatred for that patient, by a hope of personal gain, perhaps by complete indifference to human life) can make providing a patient with a means to end her own life morally wrong, whereas being motivated in other ways, including a sense of obligation to alleviate suffering, is compatible with such actions being permissible .

So, I think that whether an action is performed from a good or a bad motivation can sometimes make a difference to its moral permissibility, and I think that being motivated by one's sense of moral obligation is a morally good motivation. However, not all actions are such that a good motivation is capable of rendering them morally permissible. For example, given that it would be wrong for an agent to kill another person in some particular situation, modifying the case only by adding that the sense of obligation generated by the agent's conscience is what motivates her to kill that person will not make that act of killing morally right.

Both the consequences of violating one's conscience and the motivation to fulfill one's moral obligations can, in some cases, make a difference to the moral permissibility of an action. They are relevant, I think, because the fact that an action causes the agent who performs it guilt or remorse or internal disharmony is sometimes a bad-making feature of that action, and the fact that an action is performed because an agent is motivated by her sense of moral obligation is often a good-making feature of that action. This means, then, that conscience is at least

sometimes relevant to the moral evaluation of actions, and accordingly we should endorse a view that fits with the middle position described above by (2).

At this point it may be objected that while I have shown that conscience is connected to moral evaluation in systematic ways, I have not shown that conscience *itself* is relevant to our moral evaluation of actions. That is, its effect on moral evaluation is reducible to the effects of consequences and motives, in the familiar ways in which these factors are recognized to be morally relevant. We could describe all the morally relevant features of an action without invoking the notion of conscience.

To an extent, this is right. I do not claim that conscience is the only source of negative psychological consequences, nor do I think that being motivated by a sense of obligation is the only good motive that there is, or the only motive the presence of which can change our evaluation of the moral permissibility of an action. In this sense, the effect that conscience has on the moral status of actions is not unique. However, both the negative consequences produced by violating one's conscience and the sense of obligation conscience generates are intrinsic to conscience. That is, these are features that are part and parcel of what it is to have a conscience; they are not merely associated with conscience. Thus, I think that the most accurate way to capture this position is to maintain that conscience affects our moral evaluation by way of its generation of a motivation to act in accord with one's obligations and the negative psychological consequences that result from violating one's conscience. That is, we should accept some version of position (2).

III

There is a common platitude that holds that a person always ought to follow her conscience. One way in which such a claim could be supported is if acting in accord with one's conscience necessarily resulted in right action. The foregoing discussion sought to establish that this is not the case: sometimes one's conscience requires one to act in ways that are objectively morally wrong. But some thinkers both admit that conscience is fallible and thus can lead to wrong action *and* endorse the following principle: (C) *one ought always to act in accord with one's conscience.*⁶⁴ This generates an apparent puzzle. Suppose an agent's conscience tells her in some situation to perform an action which is, by objective standards, morally wrong. If an agent ought always to act on her conscience, then she ought to perform that action. But agents should not perform actions that are morally wrong. So, it is *also* the case that she ought *not* to perform that action.

The key to clarifying how one could accept both the judgment that conscience is fallible and thus that it may demand that an agent act wrongly and the claim that one always ought to follow one's conscience is to note that we can distinguish between the evaluation of an *action* performed by an agent and the way in which she makes the *decision* to perform that action. In order to illustrate this distinction, consider Bernard Williams's case of George the chemist.⁶⁵

George is offered a job as a researcher in a lab developing chemical and biological weapons and must decide whether to accept the position or turn it down. George is opposed to chemical and biological warfare, but the colleague who proposes this job to him tells him that if he turns the job down, it will go to another candidate who will pursue the research program with

⁶⁴Murphy, "The Conscience Principle."

⁶⁵Williams, "A Critique of Utilitarianism."

great zeal. He suggests that in taking the job instead of this more zealous candidate, George can limit the negative impact of the research done in this laboratory. Also relevant is the fact that George has a wife and children to support, and that finding a job has been difficult for him due to his poor health.

One question we can ask is whether or not George ought to accept this job.⁶⁶ As third-party observers, we may consider whether acting to advance chemical and biological warfare, or being complicit with the same, is morally permissible. This evaluation may be complicated by the fact that George seems to be in a position to mitigate the harms of such research by taking the position with the intention of doing a lackluster job in place of the other man who would wholeheartedly advance this cause. We may also consider to what extent George has a moral obligation to support his family, which he may only be able to fulfill by accepting this position. The way that Williams sets up the case suggests that pursuing this research would be a violation of George's conscience; thus, we should also consider the extent to which accepting the job would cause George to suffer guilt and psychological disharmony, and would require that he suppress his sense of moral obligation. Suppose that at the end of all of these considerations, we conclude that it would be morally wrong for George to accept the job. Then, if George does accept the job we will judge that he performs a wrong action; if he turns down the job we will judge that he performs a right action.

Separate from our evaluation of *what* he chooses to do in this case, we can evaluate the *way in which* George comes to that decision. In cases like this one, in which something morally

⁶⁶Williams provides this case in order to illustrate the tension between the utilitarian requirement to promote the overall good and the moral and personal commitments of an individual moral agent. He criticizes utilitarianism's alienation of agents from their own commitments as a degradation of their integrity. My remarks about this case here should not be taken as an attempt to interpret Williams. Rather, I just use his rich example to demonstrate the possibility of distinguishing evaluation of an agent's actions – what she in fact does – from evaluation of how she decides what she ought to do.

valuable is at stake and it is not immediately obvious what the right choice is (some of George's own commitments come into apparent conflict here), an agent ought to engage in careful deliberation about how he should act. It would be wrong for George to decide whether or not to accept the position simply by rolling a die, or by asking a stranger what he ought to do. These approaches to decision-making are wrong independently of the choice that they result in: George is wrong to decide in this manner even if rolling a die or asking a stranger leads him to turn down the job and thus by stipulation to act rightly. Conversely, George uses the right approach to decision-making insofar as he engages in careful deliberation, considering all that is at stake. This is how he should decide, whether it leads him to turn down the job (and thus to act rightly) or to accept the position (and thus to act wrongly).

Return now to principle (C): that one ought always to act in accord with one's conscience. Although this is on its face a claim about what *actions* are morally required for an agent to perform, we should instead understand it as a claim about the subjective process by which an agent decides how to act. As finite, fallible humans, we are all subject to error when attempting to determine what morality requires of us in any given situation. There is no process we could adopt such that we would be guaranteed to get our moral obligations right all of the time. Given this, how should we decide how to act? The claim under consideration here offers one answer to this question. That is, we should understand (C) as saying something like this: "when deciding how to act, you ought to appeal to your conscience. Find out what your conscience says you should do, and decide to act accordingly." The claim is then *not* that one is guaranteed to perform right actions if one follows this procedure (because conscience is fallible), but that one will have *decided* how to act in the correct way: one ought always to follow one's conscience in the sense that one ought always to appeal to conscience in deciding how to act;

even granting that following one's conscience sometimes leads one to act as one ought not to act (because it leads to morally prohibited actions).

Those who endorse (C) employ a conception of conscience on which "following one's conscience" is taken to be synonymous with "doing what one thinks is right." As we have seen, this is not the case on my conception of conscience. When we understand the mental process of conscience according to the conception I have argued for, the dictates of conscience should not be the final arbiters of an agent's decision of how to act. Recognizing that the dictates of conscience are based on an agent's internalized moral norms and that she may not reflectively endorse those norms, it becomes clear that an agent should not always decide what to do by appealing to her conscience and acting accordingly. We should reject (C). This is not to say that conscience is not an important part of an agent's moral psychology or that she ought to disregard its dictates entirely when considering what moral obligations she is under and how she ought to act in a particular situation.

In order to elucidate the role that conscience in my sense *should* play in decisions about how one ought to act, I turn now to a discussion of Jonathan Bennett's article, "The Conscience of Huckleberry Finn."⁶⁷ Bennett notes that our reasoned moral judgments⁶⁸ about how we ought to act come apart, in some circumstances, from our sympathies, or fellow-feelings toward other men. He discusses three cases that illustrate this opposition, all of which feature agents who accept moral principles that most of us judge to be wrong.⁶⁹ The first is the eponymous Huck Finn from Mark Twain's novel *Huckleberry Finn*. Traveling up the Mississippi River with his

⁶⁷Bennett, "The Conscience of Huckleberry Finn"

⁶⁸Though Bennett identifies an agent's reasoned moral judgments with her conscience, in order to avoid confusion between his usage and my usage of the term I will sub in "reasoned moral judgments" where Bennett uses the term "conscience," and reserve the use of the latter term for my own conception of conscience in this discussion.

⁶⁹In Bennett's terms, each of these agents have "bad moralities"

friend Jim, Huck must decide whether or not to turn Jim, a runaway slave, over to the authorities. As Bennett depicts the case, Huck judges that morality requires him to turn in Jim. However, his fellow-feeling toward Jim as another human being and a friend prevents Huck from acting on this moral judgment, and he chooses instead to continue to assist Jim in his escape to freedom. Huck recognizes this conflict between his sympathies and the moral principles he accepts, and, because he cannot bring himself to act in accord with what he judges morality to require in this case, resolves to forego morality entirely and instead to do whatever moves him most at any given moment, convinced that he will go to Hell for doing this.

The second case Bennett describes is that of the Nazi Heinrich Himmler, who coordinated and carried out horrendous acts in service of Hitler's Third Reich. Himmler felt sympathy towards those people whom he was tasked with exterminating, a feeling which made it difficult for him to carry out the actions he judged to be required of him. Unlike Huck, Himmler acted on his moral judgments over this opposition from his sympathies. Himmler, too, recognized the conflict between his sympathies and his morality, but appears to have thought that the really morally valuable thing was being able to do what he judged to be right in spite of this conflict and while still retaining those sympathies.

The third case is that of Johnathan Edwards, an 18th century preacher, philosopher, and theologian. Edwards believed that God ought to condemn all men to eternal suffering, because men *deserve* such suffering. Bennett notes that for most of us, sympathies for our fellow man would interfere with the wholehearted approval that Edwards expressed regarding this state of religious affairs. He concludes that Edwards, in response to this conflict between what he took to be morally right and what ordinary human sympathies would tell us, had suppressed his sympathies entirely in favor of his morality (or, perhaps had lacked sympathies to begin with).

In all three cases, the moral judgments of each agent come into conflict (or putative conflict) with their sympathies. Huck resolves this conflict by vowing to abandon morality, while Edwards evades it by suppressing his sympathies. Though Himmler holds on to both his sympathies and his moral judgments, he views the sympathies that conflict with his moral principles merely as challenges to be overcome: morality, for Himmler, should always win out.

All of *us*, Bennett notes, would judge that Huck and Himmler are both mistaken about what morality requires of them. From such a perspective, we welcome the outcome in Huck's case and wish that Himmler would have been more strongly moved by his fellow-feeling toward other men. That is, we judge that Huck *acted* rightly, while we judge Himmler to have *acted* wrongly. As Bennett describes the case, Edwards does not *act* on the moral judgment that all men deserve eternal suffering. But he does accept what the rest of us consider to be a bad moral principle, and he himself, at least, would have been better off coming to see that his moral judgments were mistaken and replacing them with better moral values.

Bennett's point, though, is not about the way we morally evaluate the actions performed or the specific moral principles accepted by these three agents. Rather, he discusses these cases in order to criticize the way in which each of these agents appear to conceive of and relate to their sympathies in relation to their moral principles. Recognizing that we are fallible and thus that some of the moral principles we accept may be bad ones – ones we would be better off rejecting or revising – we ought, Bennett argues, to keep our moral principles open to revision. An important way of doing this is to remain open to “whatever valid pressures there are”⁷⁰ on one's principles, and one source of such pressure is our sympathies. This is not to say, Bennett emphasizes, that sympathy ought always to carry the day. The best thing to do is sometimes to

⁷⁰Bennett, p. 133

act against our sympathies in service of our reasoned judgments: he gives the example of a mother whose concern for her child makes her reluctant to hand over her infant to the nurse waiting to administer vaccinations. But we ought not to dismiss those sympathies out of hand in blind allegiance to our moral principles, either.

Conscience as I have described it can present an agent with another such valid pressure against her reflectively endorsed moral principles. The dictates of conscience can and sometimes do conflict with the moral principles that we intellectually endorse, just as our sympathies can conflict with our accepted moral principles.⁷¹ The details of the particular circumstance in which this occurs will determine whether it is best to eschew one's conscience in favor of one's accepted moral principles, or vice versa – both from the subjective perspective of the agent deciding how she ought to act and from any more objective perspective we may take up.

The conclusion to draw from Bennett's discussion is that we should be careful to ensure that our moral principles are subjected to rational evaluation, and that non-rational feelings, such as our sympathies or (I add) the sense of obligation generated by our conscience, should be given weight in this process. That our sympathies or our internalized moral norms conflict with our deliberative moral judgments about how we ought to act *prima facie* counts against those deliberative moral judgments (and vice versa). If I notice that my conscience forbids an action that I reflectively judge I am morally required to perform, I ought to reflect on both what supports that moral judgment as well as on the origin of the internalized norm it represents. That is, I ought to engage in introspection about these values and feelings: how do I feel and what do I think about the situation I am faced with? Where do those feelings come from, and why do I

⁷¹Recall the case of Andrew discussed in the previous chapter, who reflectively judges that consensual premarital sex is morally permissible but whose conscience proscribes such acts.

think those things? Do they arise from values and norms that I endorse and identify with, or ones that I reject or am unsure about?

I may find that the reasons supporting my moral judgment are not as robust as I had initially taken them to be, in which case perhaps the best thing to do is to act in accord with conscience. Or, I may recognize that the internalized moral norm to which conscience appeals in this case has its origin in a religion I no longer practice, or was learned from teachers whom I have come to see as flawed, and so retain and act in accord with my moral judgment.

This process of remaining open to revisions in our morality still, as I understand it, ultimately privileges reason and reflection over non-rational psychological processes like feelings or conscience. Bennett does not argue that we should abandon our reasoned moral principles in favor of acting in accord with our sympathies in all cases: instead he advocates that we take these sympathies seriously even when they conflict with our moral principles. This suggests that we must reflectively decide in each case of conflict whether to leave our moral principles as they are, or, on the basis of reflective introspection on the conflict between the two, revise our moral principles to align with our sympathies. This is *not* a requirement that an agent be able to construct and articulate a logically sound argument in favor of the decision she makes; rather, it is a requirement that she reflect carefully, taking into consideration not only moral principles but also sympathies and conscience, in order to come to a decision that she deliberately endorses. In any particular instance, if we are able to take the time to deliberate in this way, then it is our deliberative judgment about how to act that we should follow, whether this means acting in accord with our moral principles or contravening them in favor of conscience or sympathy.⁷² By the same token, when one's conscience conflicts with one's

⁷²All that Bennett says explicitly is that we ought to subject our moral principles to valid pressures while leaving them open to revision, that our sympathies constitute one such valid pressure, and that in some cases of conflict we

deliberative moral judgments, one should not blindly follow the dictates of conscience without reflecting on the origin, content, and implications of those dictates.

Keeping in mind the distinction made above between the moral evaluation of an agent's actions and the process by which she chooses which actions to perform, let us now briefly revisit Huck and Himmler. In deciding how to act, Huck succeeds in taking his sympathies seriously, but he fails to see that doing so does not require the wholesale rejection of morality. Huck ought to have re-evaluated his moral principles in light of the conflict from his sympathies, ideally adjusting those principles such that he could endorse his decision to help Jim escape from slavery and retain a commitment to morality. Despite this flaw in his reflection and decision-making, Huck acts rightly in helping Jim to escape.

In one way, Himmler does better than Huck: he takes account of both his sympathies and his moral principles without indiscriminately suppressing either group. Although he judges that he ought to retain his sympathies, he fails to recognize that the conflict they provide with his moral principles should be considered as a legitimate challenge to those moral principles and grounds for at least re-examining if not revising them. He falls short in that he views these sympathies merely as pains the overcoming of which makes him stronger, instead of as sources of information that might affect his determination of how to act. So, Himmler's decision-making is flawed too, though differently than Huck's. And, unlike Huck, he acts in ways that are morally reprehensible.

One may worry that Himmler could have taken his sympathies seriously as potentially legitimate challenges to his moral principles and still decided that implementing the Nazi

ought to act in accord with our sympathies whereas other times we ought to act in accord with our moral principles. I interpret this to mean that in cases of conflict we ought to deliberate, taking proper account of both our moral principles and our sympathies, in order to choose how to act in the specific situation we face.

program was the right course of action, and that in such a case we would then be forced to judge that Himmler did better than Huck. This is partially true. Himmler would here be said to do better than Huck insofar as he demonstrated a serious regard both for his sympathies and for his moral principles. But he would still be heavily criticizable for the actions that he performed. The point is that we can separately evaluate the action that an agent performs and the process by which she chooses that action; it is not that using the correct decision-procedure is the only criterion for moral evaluation. That is, we can accept all of this and still judge that Huck is morally better than Himmler on the whole.

The take-away from Bennett is that the correct decision-making procedure for agents requires taking seriously any internal sources of conflict with the moral principles we accept: these include both sympathies and the dictates of the mental process of conscience as I have described it. In addition, I think, we should take seriously (without uniformly deferring to) any external sources of such conflict. Such external sources include laws, institutional policies, and the expressed moral convictions of other agents. One should not always follow one's conscience on the conception for which I have argued, because conscience here may conflict with what one judges to be right by engaging in this reflective process.

Of course, the kind of careful reflection described here, in which agents must take account of and evaluate their accepted moral principles, their sympathies, and the dictates of their conscience, along with any relevant laws, policies, and moral judgments espoused by other agents, often requires a significant amount of both time and work in order to be done well. It would be unreasonable to maintain that an agent must go through the effort of re-examining each of these factors every time she faces a decision about how to act. Attempting to fulfill such a requirement would result in no one doing much of anything (else). And in many cases, it is

simply not necessary: in the absence of any conflict between an agent's conscience, sympathies, and endorsed moral principles, a cursory assessment of the situation may suffice to assure an agent that she knows what ought to be done.

As I described in the previous chapter, one of the valuable features of the mental process of conscience on my conception is that it is constantly comparing an agent's considered actions to her internalized moral norms in the background of her conscious experience, producing a dictate that will draw the agent's conscious attention should it find that one of the actions she considers is required or forbidden by one of those norms. In this way, conscience can alert an agent to the fact that something of moral value is at stake in the situation she faces: this alert can lead her to recognize a need to further reflect on how she ought to act.

Recognizing this "scanning" role played by conscience makes salient the importance of ensuring that one has a well-formed conscience. The mental process of conscience itself is not under our voluntary control and thus is not susceptible to immediate intervention. We can, however, evaluate and work to change the contents of the set of internalized moral norms to which our conscience appeals. This process requires, first, careful reflection on which moral principles we should accept: reflection that ought to be done, ideally and to the extent possible, prior to the agent encountering situations in which she must choose to act on one of two or more conflicting moral principles. Such critical reflection on her moral principles should periodically be re-visited, especially when the agent encounters new ideas or after she has faced a situation for which she was previously unprepared. Second, the agent ought to take steps to rid herself of those internalized moral norms which she judges to be wrong, and to incorporate new norms into her System 1 psychology when she judges that this is warranted.⁷³

⁷³As was discussed in Chapter One, an agent can work to remove rejected norms or incorporate newly endorsed norms into her System 1 psychology through habituation: by at first deliberately bringing the norm to mind in

Ensuring that one's conscience is well-formed is important not simply because conscience alerts us to the need to deliberate on how we ought to act, but further because we will of course sometimes find ourselves faced with the need to decide how to act in a situation in which there is little or no time to deliberate. When an agent's conscience is well-formed, in the sense that her set of internalized moral norms completely or mostly overlaps with the set of moral principles she has critically endorsed on reflection, the dictates of her conscience will be more likely to match the judgment that careful deliberation on how to act would produce.

When an agent cannot engage in careful moral deliberation about how to act, she should usually defer to the dictates of her conscience. The exceptions are cases in which the agent knows that the internalized moral norm to which her conscience appeals is one which she has reflectively rejected but that she has not yet succeeded in removing from her set of internalized moral norms. These situations are possible because, as we saw in the previous chapter, merely recognizing that one has an internalized moral norm which one reflectively rejects is not sufficient to remove that norm from one's psychology: changing one's internalized moral norms requires time and effort.

I want to emphasize that there is of course no guarantee that such careful reflection and consideration of internal and external sources of conflict will inevitably result in an agent acting rightly or even judging correctly how she ought to act. But no finite rational agent has access to a decision-making procedure that can infallibly guide her to act rightly, and so we are all left merely to do our best. For most of us, exercising our capacity to reason and deliberate – while taking proper accord of our relevant subrational processes, which after all are the result of

situations in which it is relevant, and making an effort to evaluate her actions in light of the norm and to blame or praise herself accordingly. Eventually, as the norm becomes internalized, conscience will take over the automatic application of this norm to her actions.

thousands of years of selective evolutionary pressures – represents the best chance we have to act well. Reflective deliberation is dynamic in a way that adopting a policy of uniformly adhering to one’s internalized moral norms, or sympathies, or the pronouncements of a religious leader cannot be. Thus, following a decision-making procedure according to which one engages in reflective deliberation about how to act in each unique circumstance allows for flexibility and proper sensitivity to the nuances and relevant features of any situation an agent confronts.

Our rational faculties are, further, intimately tied up with our agency and our sense of identity. In the same way that adopting a standing policy to act in whatever way some external source demanded would constitute forsaking one’s agency, adopting a policy of always deferring to one’s internalized moral norms or one’s sympathies (or any other psychological process outside our rational control) would also amount to a desertion of agency.⁷⁴ In contrast, engaging in reflective moral deliberation and acting in accord with the results of that deliberation is an expression of one’s agency.

Aurel Kolnai makes a similar point in arguing against adopting the judgments of some concrete external entity as our ultimate standard for action⁷⁵ as being an “arbitrary marking-out of one determinate allegiance as a supreme rule of life, over and above intrinsic—intuitive and consensual—morality.”⁷⁶ He elaborates:

⁷⁴You might think that, so long as the act of adopting such a policy was freely chosen and an expression of an agent’s agency, then acting in accord with that agential decision is not a problematic desertion of agency. But I do not think that one can legitimately exercise one’s agency in a way that precludes the future exercise of agency altogether (in this area of life), or at least that such a choice does in fact amount to a choice to abandon agency in a way that is problematic. I take this to be analogous to the point that J. S. Mill makes in arguing that you cannot legitimately decide to sell yourself into slavery.

⁷⁵ An agent who adheres to some concrete standard in this way has what Kolnai calls “Overlain Conscience.” Kolnai, “Erroneous Conscience.”

⁷⁶Kolnai. p. 19

*“I feel I ought to act in such-and-such a way, not because it is honest, humane, decent or earnest, or even the high-minded, prudent, or the courageous, way of behaving in a given situation (though it may be all that), but because it is in keeping with the decree of a particular authority, suits a particular ‘higher’ interest, or distinctively expresses the style of behavior proper to a particular human type or community to which I belong.”*⁷⁷

In contrast, deciding how to act by appealing to one’s careful, reflective, deliberative moral judgments expresses “a fundamental allegiance to Right as such and opposition to Wrong as such.”⁷⁸ This is because, for Kolnai, the basis of morality is in the “open consensus” of mankind, which “is laid down in the universe of moral intuitions, traditions and codes, which are necessarily incomplete and fraught with ambiguities and inadequacies, and are therefore in need of being interpreted, supplemented, re-stated and re-emphasized.”⁷⁹ Making a policy of blindly adhering to any one embodiment of these intuitions and codes, such as the teachings of a religious organization, is to abdicate one’s responsibility to engage in such interpretation.

Although reflectively rejected internalized moral norms may still threaten us with guilt and psychological discord should we violate them, in cases in which we reflectively reject an internalized moral norm it is that act of rejection with which we identify, rather than with the rejected moral norm. Accordingly, having given the proper consideration to an internalized moral norm but having deliberately endorsed an action that would violate it, we ought to act in accord with the latter judgment because it is the one with which we identify as moral agents.

So, given the conception of conscience that I have argued for, it is not the case that an agent should always decide how to act by paying attention to her conscience and doing whatever it demands. However, neither should she completely disregard the dictates of her conscience. In

⁷⁷Kolnai. p. 18

⁷⁸Kolnai. p. 16

⁷⁹Kolnai. p. 19

cases in which there is time to engage in careful reflective deliberation about how one ought to act, an agent should take seriously the dictates of her conscience, evaluating the norms to which conscience appeals and assessing the relationship between conscience's dictates and the rest of her reflective moral judgments. In these cases, consulting one's conscience is necessary but not sufficient for deciding well. When there is no time for deliberation, an agent in most cases ought to rely on and act in accord with the dictates of her conscience. Given this important role of conscience in guiding our actions when we are pressed for time or otherwise unable to deliberate, agents further have a responsibility to spend time developing their consciences.

IV

What we have seen so far is that acting on the dictates of one's conscience does not guarantee that one acts in a way that is morally right, or that one will fulfill one's moral obligations. Nor is it the case that agents ought to adopt a standing policy of acting in accord with the dictates of their conscience in all situations. There is, however, a common sentiment that agents who act on their consciences are morally admirable, or are especially morally praiseworthy. When the term 'conscience' is used to pick out the kind of reflective, deliberative moral judgments described above, an agent is morally praiseworthy for choosing how to act by this method because, I have argued, this is how she *ought* to choose her actions (although what she chooses to do may nevertheless be a wrong action). In general, agents are morally admirable when they do things that are morally praiseworthy. Admiration differs from praiseworthiness, it seems to me, in that we are more likely to admire an agent when they do something praiseworthy in circumstances which make so acting difficult in some way: when doing what is right comes at a personal or social cost to the agent, for example.

In addition, an agent who engages in this decision-making procedure demonstrates conscientiousness in the sense of a careful diligence as opposed to hasty impulsiveness. She shows a regard for her moral obligations and a desire to act well. When she not only engages in conscientious deliberation but also acts on the judgment that results from that process, she demonstrates consistency. When so acting requires a sacrifice of some self-interest or causes the agent to incur social costs, she additionally reveals some degree of selflessness, strength of will, and moral courage. By taking seriously the views of other agents, both the views of individuals and views that are embodied in group doctrines, institutional policies, or laws, she demonstrates humility. All of these qualities are morally admirable.

Given that the mental process of conscience as I have described it is both fallible (i.e. it may fail to correctly identify an agent's actual moral obligations) and can conflict with an agent's reflective moral judgments (i.e. it may fail to correctly identify even what the agent herself takes her moral obligations to be) it may seem that there is nothing much to be said in favor of following one's conscience *per se*. Some sense, however, can still be made of the claim that an agent who acts on her conscience is morally admirable, even on the view of conscience I have put forth. This comes from the fact that the demands generated by conscience engender in the agent a sense of moral obligation. This sense of obligation, in many instances, pulls contrary to the demands of self-interest experienced by an agent. So, in acting on her conscience, an agent demonstrates allegiance to and regard for her obligations, often over self-interested concerns. Such concern for obligation, especially over self-interest, is needed in order for agents to reliably act in accord with their moral obligations. Thus, demonstrations of this regard, such as acting in accord with one's conscience, are morally admirable – even when such regard leads one to an objectively wrong action.

Acting on one's conscience, then, generally merits admiration, even when such actions do not warrant moral approval. When an agent recognizes that her conscience produces dictates that she does not endorse but acts on them primarily in order to avoid judgment from others or because doing so is convenient, she does not act admirably. This is because in such cases, the agent is motivated by her own self-interest rather than regard for her obligation.⁸⁰ It is not necessarily *wrong* for an agent to act on conscience in such circumstances: if her conscience requires something of her that she, on reflection, judges to be morally permissible but not required then her decision to follow her conscience is permissible. There is simply nothing morally admirable about such a decision. In fact, acting *against* (some of the dictates of) one's conscience may command admiration in some circumstances. If one judges that the internalized moral norm which gives rise to some dictate of conscience is problematic, and that one would be better off eliminating it from one's psychology, then deliberately violating those dictates of conscience that stem from this norm in an attempt to reprogram one's psychology, despite the psychological discord that doing so causes, is itself morally admirable.

V

In sum: The fact that an agent performed some action because she was motivated to do so by a demand produced by her conscience does not *guarantee* that she acts rightly: but it does in some cases make the difference between wrong action and right action. Agents should take seriously the dictates of their conscience, but when possible should engage in more careful reflective deliberation in order to decide how they ought to act, rather than uniformly deferring to the dictates of conscience. The admiration and respect that we tend to afford agents who

⁸⁰The same is true of actions performed in accordance with one's best reflective moral judgments: an agent may do what she judges to be morally right from any number of motives, not just from a desire to act well.

cultivate and act on their consciences is due to the sense of moral obligation generated by conscience. It is good, in general, for agents to have such a sense of moral obligation and good that they be motivated to act by this sense of moral obligation as this demonstrates proper regard for morality, even when the agent is mistaken about what morality requires of her and thus is led to act wrongly in a particular case.

CHAPTER THREE: FREEDOM OF CONSCIENCE

I

In the previous chapter, I argued that being motivated by the sense of moral obligation generated by one's conscience is morally admirable; nonetheless some actions that are motivated by conscience are morally wrong. No part of an agent's moral psychology can infallibly guide her to right action. I also argued that while an agent should attend to the dictates of her conscience, she should not always defer to those dictates when deciding how she ought to act. This is, in part, because of the potential tension between an agent's internalized moral norms and her evaluatively accepted moral principles. Most of the time, conscience is a reliable guide to an agent's own moral values and thus acting on the basis of its dictates is generally a good way to go, especially when one must act quickly, or confronts a familiar situation. But when careful reflection leads an agent to judge that she ought to act against her conscience, she should follow that judgment.

These are claims about how an agent may permissibly act with regard to her *own* conscience, and the role that the dictates of conscience should play in her moral deliberations. We can also ask how an agent may permissibly act in relation to the consciences of *other* agents. Despite the fact that each individual's conscience is fallible in the ways described above, protections for conscience and conscience-based actions are often asserted in claims to rights of freedom of conscience, especially within the context of liberal political theory.

For example, both George Washington and James Madison wrote about the importance of freedom of conscience. Madison, in a discourse on property, states that a man's opinions, his

communication of those opinions, and the use of his faculties as he chooses in accord with those opinions are an important type of property that should rightly be protected by the government.

He says about the protection of conscience specifically:

*To guard a man's house as his castle, to pay public and enforce private debt with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact.*⁸¹

George Washington, in a letter to the Society of Quakers, similarly opines that it is the proper role of government to protect the consciences of its citizens. In this response to an address in which the Society of Quakers asserts their conscientious objection to participating in war, Washington writes,

*I assure you very explicitly that in my opinion the Conscientious scruples of all men should be treated with the greatest delicacy and tenderness, and it is my wish and desire that the Laws may always be as extensively accommodated to them, as a due regard to the Protection and essential Interests of the Nation may Justify, and Permit.*⁸²

In contemporary discourse, freedom of conscience is often taken to be a fundamental human right. Article 18 of the United Nations' Universal Declaration of Human Rights, holds that:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*⁸³

Similarly, Article 9.1 of the European Convention on Human Rights reads:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*⁸⁴

⁸¹Madison, "Property."

⁸²Washington, "From George Washington the Society of Quakers," October 13, 1789.

⁸³ United Nations, "Universal Declaration of Human Rights."

⁸⁴ European Court of Human Rights and Council of Europe, "European Convention on Human Rights."

In this chapter, I will discuss the moral limits to freedom of conscience and the ways in which individual agents may legitimately constrain one another's conscience-based actions. The subject of freedom of conscience is deeply intertwined, both historically and politically, with the idea of religious freedom, as is apparent from the above quotes. Although further exploration of this relationship would prove interesting, here I will not specifically address religion but instead attempt to isolate questions of freedom of conscience from religious freedom insofar as possible. To do this, I will first discuss how we should understand claims to rights of freedom of conscience, dividing conscience-based freedoms into three related categories: the freedom to hold one's own moral views, the freedom to express one's moral views, and the freedom to act in accord with those moral views. Next, I will turn to the question of the value of the freedoms encompassed by these three categories. Against this background, I will discuss the moral contours of freedom of conscience and the legitimate constraints that may be imposed on an agent's exercise of her conscience-based freedoms by other moral agents.

II

The first task is to clarify what is at stake in claims to freedom of conscience. It is important, first, to note that the term 'conscience' as it is used in the context of discussions of freedom of conscience is not typically used to pick out the mental process of conscience that produces dictates, which was our subject in Chapter One. Instead, 'conscience' in this context is used to pick out an agent's considered moral views and commitments. For most people, there is considerable overlap between the internalized moral norms that give rise to the demands of conscience in any given situation and the moral views that they reflectively endorse. And it is

the intersection of these two sets – internalized moral norms and reflectively endorsed moral views – that we should be primarily concerned with in a discussion of freedom of conscience.

The mental process of conscience that produces dictates is responsible for generating an agent’s sense of moral obligation, and threatens guilt, remorse, and internal disharmony should she violate those dictates. These features of the mental process of conscience certainly contribute to the thought that protecting conscience and conscience-based actions is important. But when a sense of obligation or the threat of psychological discord attaches to dictates that an agent deliberately rejects, it does not merit protection. It is the agent’s reflective, deliberative endorsement of a moral view coupled with the sense of obligation to act in accord with that moral view generated by the mental process of conscience that confers whatever special status claims to freedom of conscience have.

In what follows, then, I will primarily use the term “conscience” synonymously with the term “moral views.” Both should be understood as referring to those reflectively endorsed moral views that also occupy the kind of role in an agent’s moral psychology that makes them available to the mental process of conscience such that she experiences a felt obligation to act in accord with them and will experience guilt, remorse, or psychological discord if she acts against them.

It will next be helpful to briefly elaborate on the conception of freedom. Gerald MacCallum gives a useful framework for understanding the basic concept of freedom as a triadic relation between (1) an agent, (2) certain preventing conditions, and (3) certain doings or becomings of that agent.⁸⁵ MacCallum argues that all types of freedom can be understood as freedoms *of* (1) some agent, *from* (2) some particular set of preventing conditions, *to* (3) do or become something. Element (1) is relatively straightforward; it indicates to whom the freedom

⁸⁵MacCallum, “Negative and Positive Freedom.”

is being ascribed. The preventing conditions in element (2) are barriers, obstacles, constraints, interferences, or restrictions. And the doings or becomings in element (3) can be actions or inactions, or changes (or resistance to changes) of conditions of character or circumstance. In claiming that *any* type of freedom can be understood according to such a triadic relation, MacCallum rejects the distinction commonly drawn between positive and negative freedoms. On his framework, all freedoms have both a negative component in that they are freedoms *from* some barrier, captured by element (2), and a positive component in that they are freedoms *to* do or become something, captured by element (3).

MacCallum argues that the robust debate surrounding the question “when are persons free?” can most productively be understood as consisting in a number of disagreements about the proper way to understand the ranges of the three elements in this relation. For example, the debate about what free will consists in can be understood, in part, as a disagreement about which desires or impulses are to be considered a proper part of “the agent” and which are better classified as “preventing conditions.” And debates about political freedom center around disagreements regarding what actions must be available to citizens in order for a state to count as free.

Different theories of freedom vary with regard to which preventing conditions are considered to genuinely undermine freedom. On some views, one is unfree with regard to some action just in case one is unable to perform that action, regardless of what kind of obstacle makes one unable to so act.⁸⁶ For example, the physiologic inability to breathe underwater limits human freedom on this view. On other views, only preventing conditions imposed by human agents limit freedom. Further distinctions are sometimes drawn such that all obstacles that an

⁸⁶Cf. Crocker, *Positive Liberty an Essay in Normative Political Philosophy*; Cohen, *History, Labour, and Freedom*; Amartya Sen, *Inequality Reexamined*; van Parijs, *Real Freedom for All*.

agent is *causally* responsible for,⁸⁷ or only obstacles that an agent is *morally* responsible for,⁸⁸ or only obstacles that are *intentionally* imposed by an agent⁸⁹ are properly said to limit freedom.

My primary aim in this chapter is to survey the ways in which an agent's conscience-based actions may legitimately be constrained. Some constraints are legitimate precisely because they do not substantially limit an agent's freedom, though they do limit or shape the scope of actions available to her. And, some constraints that genuinely do restrict freedom may nonetheless be justified by competing considerations. What I have to say about legitimate and illegitimate constraints, then, should be compatible with a number of different substantive theories of what it takes for an agent to be free. Here I will use the term freedom to mean, roughly, lack of restrictions, such that there is absolute freedom of conscience if there are no restrictions whatever on an agent's conscience or conscience-based actions, with any restriction (no matter how minimal) reducing this freedom.

Applying MacCallum's general framework for understanding freedom to the topic of freedom of conscience, we can identify three closely related categories that may be the subjects of claims to freedom of conscience: (A) freedom to hold one's own moral views, (B) freedom to express one's conscience, and (C) freedom to act in accord with one's conscience. These three categories of *freedoms to* are closely interrelated and are to some extent separable in principle only. But considering each in isolation will aid in clarifying our discussion.

The first kind of freedom is a freedom for agents to *be* a certain way or to *become* certain kinds of agents: to hold their own moral views. There is of course a sense in which an agent

⁸⁷Cf. Oppenheim, *Dimensions of Freedom: An Analysis*; Kramer, *The Quality of Freedom*.

⁸⁸Cf. Kristján Kristjánsson, *Social Freedom*.

⁸⁹Cf. von Hayek, *The Constitution of Liberty*; von Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*.

cannot hold anything but her own moral views, and so the question of *freedom* in this regard may seem misplaced. This apparent puzzle illustrates MacCallum's point that coherent discussions of freedom must specify not just what an agent is free to do or be, but which preventing conditions she is free *from*. Typically, discussions of freedom to hold one's own moral views are concerned with freedom from incurring certain sorts of costs as a result of the particular views that one holds (for example, freedom from religious persecution), or freedom from having the moral beliefs of others imposed upon one. In particular, it seems that what we really esteem is the freedom to decide for oneself what one believes and values by way of rational deliberation and evaluation of competing positions. Freedom of conscience in this sense is a particular type of freedom of thought.

The next category, freedom of expression of conscience, is a freedom to perform a limited range of actions: those that express the moral views an agent has reflectively endorsed and internalized. To fall within this category, an action must be an act of *expression*, and the content of the expression must be a moral view that the agent actually and sincerely holds. So, acts of expression of conscience are those that are intended to communicate one's moral views to someone else. Such acts include things like stating or discussing one's views verbally or in writing, wearing, carrying, or erecting symbols that indicate one's views, or making certain gestures or adopting particular postures. For example, bowing one's head during a prayer is primarily an expression of reverence, and Colin Kaepernick's adoption of a kneeling position during the national anthem can plausibly be understood as being primarily intended to communicate his views on police brutality and racial inequality within the United States.

Although of course acting in accord with one's conscience often communicates something about the moral views that one holds, in order to isolate the moral permissibility of

expression itself it will be useful to limit discussion of this category to acts the primary purpose of which is to communicate an agent's moral views. For example, a physician who refuses to perform an abortion because she believes it to be morally wrong may signal something about that moral view by her refusal, but the primary purpose of her refusal is to refrain from committing what she considers to be an unjust killing; it is not to inform others that she holds such a view. Thus, this would not count as an act of expression in the sense relevant for our discussion here. We should admit that the boundaries between what counts as an act of (pure) expression of one's conscience and what does not are not sharp in all cases. But to get clarity in the central cases will be helpful nonetheless.

The final category, freedom to act in accord with one's conscience, is also a freedom to act in certain ways. Unlike the expression of conscience, which is a relatively well-circumscribed category, there are no real limits on the category of actions that accord with one's conscience because at least in principle *any* action whatsoever may be required by an agent's conscience. Which actions her conscience in fact requires of her will depend upon the content of her moral views – her moral beliefs and her internalized moral norms – and the circumstances in which she finds herself. The freedom to act in accord with one's conscience is, accordingly, not a freedom to perform some particular types of *actions*, but rather a claim to freedom to act on a particular type of *motivation* or *reason*: that of felt moral obligation or the belief that one's action is morally required.

Though I think it will be useful to separate these three conscience-related freedoms for the purpose of our discussion, in reality they are inextricably linked. As already noted, acting in accord with one's conscience will often have an expressive component; further, the value of

being free to express or act on one's moral views is likely to be significantly diminished if those views have been imposed upon one by other agents rather than freely adopted.

III

It is natural to begin an explanation of the value of freedom by an appeal to the importance of autonomy. Autonomy is widely held to be valuable for moral agents. For example, J.S. Mill argues in *On Liberty* that the freedom to exercise autonomous choice is valuable because "The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference are exercised only in making a choice."⁹⁰ Being free to hold one's own moral views, express those moral views, and act on those moral views all promote autonomy and so are valuable in this way. The value of autonomy supports the importance of freedom in any number of domains; it is not specific to conscience-based freedoms. But there are also considerations specific to the value of being free in relation to one's moral views or conscience in the realms of thought, expression, and action.

The freedom to hold one's own *moral* views in particular is valuable because our moral commitments are often deeply connected to our character, to our identity as individual agents, in a way that other beliefs are not. Compare the belief that one ought always to be honest with one's friends to the belief that acceleration due to gravity is 9.8 meters per second squared. If I ask someone what kind of a person you are and they tell me that you believe that honesty is of paramount importance in friendships, they have at least partially answered my question. If instead they tell me that you believe that acceleration due to gravity is 9.8 m/s², I will assume that they did not understand my question or I will expect a follow up explanation about how that

⁹⁰Mill, *On Liberty*. p. 56

belief is connected to your character (for example, that you value scientific information above all else, or that you believe the world can be understood completely in terms of mathematical calculations, or something along these lines).

There is some tension between the value of *true* beliefs and the value of being free to come to hold whatever beliefs one endorses as a result of rational deliberation and evaluation of evidence and arguments. That is, unsurprisingly, rational deliberation sometimes leads us to adopt false views. For this reason, it may seem that the value of holding true beliefs (or the disvalue of holding false beliefs) could justify imposing true beliefs onto another agent. However, the value of accepting a true moral view is typically taken to depend in large part upon the agent freely choosing and adopting that view. So even granting that true moral views are significantly more valuable than false moral views, much of this value would be lost were these true moral views to be acquired through indoctrination or brainwashing.

So freedom to hold whatever moral views one comes to accept and endorse through rational deliberation and evaluation is valuable because it is a freedom to choose (to an extent) the kind of person that one wishes to be. Further, the full value of coming to hold correct moral views can only be obtained when this freedom exists.

Next, the freedom to express one's sincerely held moral views is valuable in part because this ability is necessary in order to support and promote the kind of moral deliberation necessary for agents to decide for themselves which views to accept in the first place. An important part of formulating one's own views, especially with regard to difficult subjects like moral requirements, is the ability to express those views to others and so to expose them to question or criticism. J. S. Mill famously argued that allowing each person to freely express her own opinions, even those which most of us judge to be patently false or even evil, provides society as

a whole with the best chance of coming to the truth. Against suppressing any view, he argues, “If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error.”⁹¹ He further argues that true understanding requires critical examination and discussion of one’s beliefs; this in turn requires a broad latitude of freedom of expression. Freedom of expression of one’s moral views, then, is valuable insofar as it assists in the progress of individuals and society toward divining and accepting moral truths.

Further, I take it that the ability to express oneself is central to our wellbeing as humans. We are social creatures who seek to form deep and meaningful relationships with one another, as a vital part of leading a fulfilling life. In order to form a meaningful relationship with someone, that person must see us for who we are. For them to see us for who we are, we must be able to express ourselves. As I argued above, many of an agent’s moral views are central to who she is as a person, and thus her expression of those moral views is valuable in part insofar as it is necessary in order for her to be seen and known by others with whom she seeks to form meaningful relationships.

Third, the freedom to act in accord with one’s moral views is also valuable in part because of the connection between such actions and an agent’s identity. Many moral views concern the ways in which an agent ought to conduct herself; accordingly, one who is committed to such views sees herself as the kind of person who acts in the ways those views require. Restrictions on her ability to act in accord with such views limit her ability to be who she chooses to be. The freedom to act on one’s own conception of the good is also valuable for society as a whole, to turn again to Mill, because individuality and originality are valuable.

⁹¹Mill. p. 16

Further, he argues, “it is useful that while mankind are imperfect there should be different opinions, so that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when anyone thinks fit to try them.”⁹² As in the case of coming to hold true moral views, coming to recognize which ways of life are worth pursuing requires that we allow the pursuit of a diversity of different ways which can then be evaluated.

Finally, all three freedoms - to deliberatively adopt one’s own moral views, to express those moral views, and to act in accord with them, - are necessary in order for an agent to have integrity as Cheshire Calhoun understands it. On Calhoun’s view, having integrity is a matter of maintaining both the proper relation to oneself *and* the proper relation to others. To have integrity, she argues, is to have “the proper regard for one’s own judgment as a deliberator among deliberators.”⁹³ The story goes as follows. We are social creatures, and as such we are members of a community of deliberators that has an interest in answering the general question, “What is worth doing?” as well as its more specific formulations (“Who is worth voting for?” “What is worth writing about?”). The only way that the community can answer this shared deliberative question is for individual members to take it on. Each individual agent has her own deliberative viewpoint, and it is only from this individual viewpoint that she can approach these questions. The best chance of the community arriving at good answers to these shared deliberative questions is for each individual agent to make her best judgment, and to represent that best judgment accurately to other deliberators. To have integrity, Calhoun argues, “is to understand that one’s own judgment matters because it is only within individual persons’

⁹²Mill. p. 53

⁹³Calhoun, “Standing for Something.” p. 259

deliberative viewpoints, including one's own, that what is worth doing can be decided."⁹⁴ Thus, the person of integrity maintains the proper relation to herself by recognizing that her own best judgment matters to her community of deliberators and also maintains the proper relation to others by taking seriously the importance of their best judgments.

On such a picture, to have integrity requires that an agent first *make* judgments about at least some of our shared deliberative questions. Central to these shared deliberative questions are moral questions about how we ought to treat one another, and in what a good life consists. Accordingly, having moral views – even ones that turn out to be incorrect – is necessary in order for an agent to have integrity. Further, Calhoun's picture of integrity suggests that *this* value of moral views is only present when the agent has acquired those views as a result of making her *own* best judgment. That is, it makes a difference to an agent's integrity how she acquired her moral views. If she has merely unreflectively adopted the views of her parents, teachers, religious leaders, or whomever else was the strongest influence in her moral and intellectual development, she has not made her own best attempt at answering our shared deliberative questions for herself. Similarly, views imposed onto others by coercion, indoctrination, or brainwashing, even if they turn out to be true, would not be *that agent's* best judgment on the matter and thus would not be as valuable as the agent coming to hold those same true views as a result of her own deliberation.

In addition to *having* moral views that represent one's best judgments about shared deliberative questions, integrity as Calhoun describes it further requires that an agent *express* those moral views to other agents in her community. This value of expression will apply only when the views expressed are those that represent the agent's best attempt to answer moral

⁹⁴Calhoun, p. 257

questions, and further when the expression is done in a manner that demonstrates proper respect toward other agents who are similarly trying to answer those moral questions. Finally, having endorsed a moral view and having respectfully expressed that view to one's community of deliberators, an agent must *stand for* that view by acting in accord with it on the relevant occasions and in appropriate ways. So, acting in accord with one's moral views in order to stand up for them is valuable in that it is required for an agent to have integrity.

IV

Though freedom in these domains is valuable, its value is not unopposed, nor does it invariably trump the values with which it comes into conflict. Accordingly, there will be justifiable limits to freedom of conscience. In this section, I will discuss the ways in which morality itself restricts the conscience and conscience-based actions of agents. In the following section, I will discuss the ways in which agents may permissibly restrict the conscience and conscience-based actions of others. In both discussions, I limit my focus to individuals as private citizens. When an agent takes on a special role or office that is subject to its own set of moral requirements (e.g., when she becomes a judge), or when she acts within the context of a relationship which imposes special duties onto her (e.g., that of a parent), the special moral requirements of that role may further restrict her freedom of conscience in one or more domains. Each of these special contexts requires its own discussion, which I will not conduct here.

Turning first to moral constraints on conscience and conscience-based actions, I will argue that agents are sometimes morally prohibited from holding certain moral views, expressing their sincerely held moral views, or acting in accord with those views. These moral prohibitions restrict conscience and conscience-based actions in that they make it impossible for an agent to

hold, express, or act on her moral views in certain cases *and* to be immune to moral criticism or exempt from other moral costs.⁹⁵

The arguments of the previous chapter established that acting in accord with one's conscience is not always morally permissible: that is, there are moral limits to the freedom to act on one's conscience. Because of the diversity of types of actions that can be motivated by an agent's moral views, an exhaustive discussion of these limits is beyond the scope of this paper.

The two other categories of freedoms of conscience are more circumscribed. We can make a distinction within the first category, the freedom to hold whatever moral views one chooses, between evaluation of the *content* of an agent's moral views and the *route* by which she acquired that view. Acquiring or revising one's moral views by way of rational deliberation and evaluation of reasons, evidence, and arguments is always morally permissible: there is no moral requirement to acquire views via some non-deliberative route or to unquestioningly maintain one's moral views. To the contrary, I argued in the previous chapter that moral agents have a responsibility to engage in reflection and critical evaluation of their moral views: to the extent that an agent fails to do so, she is morally criticizable.

Are there limits to the content of the moral views that an agent may permissibly hold? George Sher argues that within the realm of private mental states, nothing can be forbidden nor required by morality: any thought or attitude is permitted.⁹⁶ Sher allows that beliefs can be criticized on epistemic grounds if they are, e.g., unsupported by an agent's evidence; and an agent's thoughts can reflect his character. Thus, Sher thinks, there are reasons to avoid or to

⁹⁵As mentioned above, there is room for debate about which constraints should be considered as genuine limits to freedom and which constraints merely impose obstacles without making an agent any less free. Here I identify moral restrictions on conscience and conscience-based actions; one could accept these moral restrictions but maintain that they do not actually limit freedom.

⁹⁶Sher, "A Wild West of the Mind"; Sher, "Like a Dye in Water."

cultivate certain mental states, but it is wrong to go so far as to claim that morality prohibits or requires any particular mental states.⁹⁷

Sher supports this position by arguing that accepting any moral prohibitions on one's mental states drastically reduces one's mental freedom.⁹⁸ Because mental freedom is of "surpassing value,"⁹⁹ we should not accept any such prohibitions. To show how such prohibitions would impact mental freedom, we need to recognize that we have *some* control over our thoughts, though not nearly as much control as we have over our actions. Sher considers an agent who believes that she is morally prohibited from fantasizing about shooting her co-worker. We can to some extent control what we decide to think about, and so one way for her to satisfy such a prohibition is for her to refrain from choosing to think about shooting the problematic coworker. But merely never choosing to think a thought is not enough. We have mental machinery for drawing inferences and associations over which we do not have direct control, and which leads us from one thought to another often in unpredictable ways.¹⁰⁰ If our agent accepts a moral obligation to avoid thinking of shooting her coworker, Sher argues, she will likely also accept a derivative obligation to avoid thinking any thoughts that she has reason to expect would lead her, through inference or association, to thinking of shooting her coworker.¹⁰¹ What began as a prohibition against a single thought (shooting one's coworker) then quickly becomes an

⁹⁷Sher, "A Wild West of the Mind." p. 2

⁹⁸In "Like a Dye in Water" Sher notes that he thinks the mere existence of moral prohibitions on thought, even in the absence of an agent's acceptance of those prohibitions, also significantly reduces mental freedom. However, he sets this point aside and discusses only the freedoms that are threatened by our acceptance of prohibitions.

⁹⁹Sher, "Like a Dye in Water." p. 1. Sher does not indicate what it is that he takes to be so valuable about mental freedom, though his later remarks suggest the kind of connection between one's thoughts and one's identity as a person or one's personality that I drew in relation to an agent's moral views above.

¹⁰⁰Such processes are a part of System 1, in the framework discussed in Chapter One.

¹⁰¹Sher, "Like a Dye in Water." p. 6

obligation to avoid uncountable other thoughts, further restricting the scope of choices an agent may permissibly make.¹⁰²

Additionally, certain *beliefs* may lead to the forbidden thought, and so must also be avoided. For example, a belief that shooting those who have wronged you is very satisfying, or a belief that one could easily obtain a gun at the store down the street may engender the prohibited thought. Recognizing this, Sher argues, the agent would then be obligated to avoid coming to believe these things (even if they are in fact true). In order to avoid coming to believe these things, she will have to avoid acquiring any beliefs from which the problematic belief could be inferred. She will also have to avoid coming to possess evidence that supports these problematic beliefs, or will have to downgrade any such evidence she already possesses. She will then have to further avoid or downgrade evidence that supports such evidence, and so on *ad infinitum*. In this way, accepting a moral prohibition against just a single thought limits what we may permissibly choose to think about and how we may choose to act in a (perhaps surprisingly) significant way.

In addition to limiting an agent's choices, accepting a moral prohibition against thinking certain thoughts further constrains freedom of thought by impeding the natural flow of an agent's ideas: the conviction that having some thought is morally wrong may stop her in her tracks when a forbidden thought arises.¹⁰³ Such impediments, Sher argues, interfere with the expression of our personalities, because "the preoccupations and dispositions that shape our fantasies and

¹⁰²Sher notes that such an agent would, for example, have to avoid thinking about the ways in which her coworker has wronged her, avoid thinking of her coworker entirely while she is at the shooting range, and avoid watching movies in which the protagonist shoots someone who has wronged her.

¹⁰³Sher, "Like a Dye in Water." p. 6

emotional reactions, and that determine what we remember and what occurs to us, are themselves an important part of what makes us persons as we are.”¹⁰⁴

Sher separately argues that the purely private mental realm simply does not fall under the proper scope of moral requirements or prohibitions. Each person’s subjectivity, he argues, is essentially a world of its own. What occurs within any agent’s mind may be totally independent of what is occurring in the public world (consider a student who spends an entire lecture daydreaming about her spring break plans), and is inaccessible to the gaze of other agents.¹⁰⁵ In contrast, Sher understands morality as an attempt to answer questions about how we as embodied beings interacting with others like ourselves ought to balance the pursuit of our own interests with our capacity to adversely affect those around us.¹⁰⁶ Moral prohibitions and requirements, then, have no application within the private thoughts of individuals.

Our concern here is not with thoughts generally, but with the subset of an agent’s thoughts relevant for freedom of conscience: her internalized and endorsed moral norms. Sher has argued against *any* moral prohibitions on the realm of the subjective; it follows that he rejects such prohibitions against an agent’s moral views.

The conclusion that we should not accept any moral prohibitions against thoughts cannot itself be a prohibition on what moral convictions an agent may hold, on threat of inconsistency, because moral convictions are a part of an agent’s subjectivity and Sher has just argued that we should not accept any prohibitions within the realm of the subjective. So, if it were a moral prohibition on what moral convictions an agent may hold, his claim would be self-defeating. If

¹⁰⁴Sher. p. 39

¹⁰⁵Sher, “A Wild West of the Mind.” p. 12

¹⁰⁶Sher. p. 3

we should not accept any prohibitions within the realm of the subjective, then we should not accept any limits to the moral views that an agent may accept since her moral views are a part of her subjectivity. It follows from this that an agent may accept a moral view which prohibits her from thinking certain thoughts or holding particular attitudes toward others: i.e., she may accept prohibitions against the realm of the subjective.

The best that Sher has done is to have shown that accepting such prohibitions has certain consequences: it means that an agent will feel morally compelled to avoid certain thoughts and that she will feel guilty when she fails to avoid such thoughts. These limits to mental freedom may be factors that count against a decision to accept a particular prohibition, but they do not provide overriding reasons to reject all moral prohibitions within the realm of the mental.

For one thing, Sher has not given us reason to believe that there *are* no such moral prohibitions: these threats to mental freedom all arise from an agent's *acceptance* of a moral prohibition, not the existence of such a prohibition. Because we sometimes get our moral requirements wrong, we may mistakenly accept such a prohibition when it does not exist, or we may fail to accept a prohibition that does have a claim on us. In the latter case, the existence of a prohibition that she does not accept cannot infringe an agent's freedom in the ways Sher identifies as problematic. If there is good reason to think that there *are* such prohibitions, then that would be a reason to accept them even if they do in fact diminish mental freedom.

Further, the reasons Sher has given for agents to reject moral prohibitions in the realm of the subjective are not convincing. The thoughts we think and the attitudes we hold toward others are, as Sher points out, intimately related to the kind of people that we are. For some agents the acceptance of a moral prohibition against entertaining certain thoughts may *itself* be just as central to an agent's personality, to what makes her the person she is, as the other parts of her

psychology that shape the train of her unchosen thoughts. Someone who is deeply committed to the biblical command to “love thy neighbor,” may, for example, interpret it as requiring that she cultivate a certain fellow-feeling toward those in her community, and as prohibiting her from feeling things like disdain or contempt for others. Such an agent may find that her thoughts have wandered to the time her neighbor, driving down the cul-de-sac where her children were playing, carelessly sped through a stop sign; this thought may in turn give rise to annoyance and anger toward her neighbor. Recognizing these feelings, this agent may feel compelled to cut off this train of thought and focus instead on the admirable qualities that that neighbor possesses, or to remind herself of the importance of forgiveness, or to direct her thoughts to another subject entirely. This agent’s conviction that holding certain attitudes toward others is wrong has certainly impeded this particular line of thought. Perhaps it has prevented one *aspect* of her personality from spontaneously expressing itself, but when the conviction is one that the agent wholeheartedly endorses, then the impediment appears to me to itself be the expression of just another aspect of the agent’s personality rather than a burdensome imposition of something “other.” Thus, an agent’s acceptance of a moral prohibition against certain lines of thinking does not necessarily inhibit the expression of her personality, and so this is not always a reason to reject such prohibitions.

The most compelling point that Sher puts forth against prohibitions on thought is that an agent’s subjective life, taken in isolation, neither affects nor is accessible to other agents and thus does not fall under the proper scope of morality. But ultimately I am not convinced by this either. Perhaps much of our subjective experience falls outside the scope of morality for this reason. But moral views themselves are one part of our subjectivity which seem to me to be legitimately subject to moral requirements and prohibitions.

If it were morally permissible to hold *any* moral views, then it would follow that morality permits an agent to sincerely believe that the moral worth of individual agents varies as a function of the darkness of their skin, for example. We could of course still hold that *acting* on this moral view, or even expressing it, is morally prohibited, while maintaining that morality nonetheless permits agents to endorse such a view. But I for one find that position unsatisfying. It is not just wrong to make racist statements or to perform racist actions, it is morally wrong to hold racist views. Some (let us stipulate, false) moral beliefs may actually be morally innocuous to hold. For example, a belief that dancing is licentious and so is morally prohibited may be wrong in the sense of *incorrect* without being wrong in the sense of morally bad to believe.

This suggests that it is not *false* moral beliefs per se which are morally criticizable, but rather those moral views which are not just incorrect with regard to the moral obligations that an agent has, but that license or require actions that are, by the lights of the correct moral system, wrong. An agent who acted in accord with a moral principle that recognized some agents as counting more, morally, than others in virtue of their skin color would act wrongly. An agent who acted on a principle which held that dancing is morally wrong would simply refrain from engaging in dance, and refusing to dance is not (under normal conditions) morally wrong.¹⁰⁷ The upshot is that it is not *morally* wrong to hold moral views which prohibit acting in ways that are in fact morally permissible: to believe morality to be stricter than it is in actuality (though there may be other grounds for criticizing such beliefs). In contrast, it is morally wrong to err in the opposite direction: to believe that morality is more permissive than it is in actuality. Note that the determination of which moral views are wrong for an agent to hold is parasitic on the

¹⁰⁷Attempts to impose this view on others (as distinct from attempts to act well oneself in light of this view) would result in wrong action. This is also true of many attempts to force other agents to act in accord with true moral views. This is because (as will be discussed below) attempting to impose one's own moral views onto others outside of rational deliberation is generally impermissible.

determination of what morality actually requires of us. Because the latter is far from settled, so will be the former.

Turn now to the moral limits on freedom to express one's conscience. In general, acts of expression are wrong when they are intentionally deceptive or when they (otherwise) cause harm. The expressions of conscience that we are concerned with for the purposes of claims to freedom of conscience are those that are genuinely intended to communicate one's sincerely held view; these acts of expression will never be (intentionally) deceptive. However, such expressions may cause other types of harms.

An act of expression of conscience can be broken down into three components for the purposes of moral evaluation: (1) the content of the moral view expressed, (2) the manner in which the view is expressed, and (3) the context in which the expression occurs. It is my view that the content of a moral view never by itself makes an act of expression of conscience morally wrong. That is, while it is morally wrong to hold some moral views because of their content, it is not thereby morally wrong to communicate those same views to others. Accordingly, there are not blanket moral prohibitions against expressing any particular moral views. This is due to the importance of moral deliberation and the value of discussion of conflicting moral viewpoints.

Like any other act of expression, the manner in which a moral view is expressed may cause harm independently of the content of that moral view. This is true of both non-verbal and verbal expressions. For example, shouting one's moral view may damage another person's eardrums or cause an avalanche, and thus cause harm in a way that is completely independent of the content of the view that one has communicated. Similarly, adopting a condescending or disrespectful tone, or assuming an air of arrogance or spitefulness may cause psychological harm to another agent, again independently of the content of the moral view that is expressed. It is

morally wrong to engage in expression of one's moral view that causes harm to another agent – either physical or psychological – when one could express that same view in a different manner without causing that harm.

In some cases, it is a combination of the content of the view expressed and the context in which the expression occurs that together make an act of expression morally prohibited, like the classic example of goading an angry mob. Making a speech about the evils of capitalism and the importance of social safety nets to an already frenzied crowd outside of a wealthy Wall Street firm is morally wrong if doing so incites violence. Either making the same speech to a group of contemplative economic students, or making a different speech in which one asserts a moral imperative for parents to vaccinate their children to that original crowd, is unlikely to cause violence and thus is morally unproblematic. It is morally impermissible to engage in an act of expression of conscience when doing so causes harm because of the context in which the expression occurs, such that the same view could be expressed at another time or in a different place (but to the relevant hearers) without provoking that harm. Needless harm must be avoided.

In contrast, harms that occur due to the content of the moral view that is expressed, which cannot be avoided by expressing that view in a different circumstance or manner, are not the kind of harms which can render an act of expression of conscience morally impermissible. These are psychological harms that occur in the hearer of the expression, like offense, distress, or anxiety. For example, the expression of the view that women are less morally valuable than men may cause psychological harm to a woman who hears it precisely because of the content of the view expressed. When possible, one ought to avoid causing offense or psychological distress in those to whom one expresses one's moral views. But, for agents acting as private citizens and in the absence of any special role-based obligations, when an act of expression is undertaken

respectfully, in a way that promotes rather than forecloses moral discourse, the offense or psychological distress that it induces in another agent is not the kind of harm that can render this expression morally wrong.

In summary: it is morally wrong for an agent to hold moral views which license or require morally impermissible actions. However, the value of moral discourse is such that the expression of views which are wrong to hold is not itself necessarily morally wrong.

Expressions of one's moral views are wrong insofar as they cause needless harm to others by virtue of some feature of the context or the manner in which the expression is made. And actions that are performed on the basis of one's conscience may be wrong in the same ways that actions in general may be morally wrong. In all of these ways, there are moral limits to an agent's conscience-based freedoms.

V

The foregoing discussion described the contours of moral freedom of conscience. I will turn now to constraints imposed by other moral agents. As a reminder, I consider only individual agents interacting with one another in the capacity of private citizens and outside of any special relationship-based obligations to one another. Other agents can interfere with conscience-based freedoms either before the fact, in ways that make it more difficult or impossible for one to perform conscience-based actions, or by imposing costs *post hoc*. An agent could prevent another from expressing her moral view by ensuring that she does not make it to the talk she is scheduled to give; this is an example of a constraint imposed before the fact. Or, an agent could stop patronizing a small business because she disagrees with the moral views espoused by its owner; this would be to impose a cost after the fact.

Costs may limit the freedom of an agent in two ways. First, costs foreclose certain complex options. For example, consider a case in which a professor at a very liberal university suffers social ostracization for expressing conservative political opinions. Though the fact or threat of social ostracization does not prevent this professor from expressing her political views, it does make it impossible for her to *both* express her political views *and* not suffer socially. This forces her to choose: express her views and endure the ostracization, or keep her unpopular views to herself and preserve decent social relationships with her colleagues. Second, the anticipation of a cost can increase the psychological difficulty of performing the action in question. Recognizing that expressing her views will lead her colleagues to snub her may make it more difficult for the professor to bring herself to express those views.

Note first that the fact that some action is morally prohibited for one agent to perform does not, on its own, guarantee that another agent has moral permission to prevent the first agent from so acting, or to impose some punishment on her if she does so act. Some general considerations support not interfering with the conscience-based actions of other agents, even when we judge that they are in the moral wrong. Respect for the autonomy of other moral agents creates a broad presumption in favor of non-interference: other things being equal, we ought to avoid exerting control over others. We should clarify at the outset that influencing an agent's moral views, expression of those views, or the actions that she performs in accord with those views by way of rational deliberation or persuasion is always morally permissible within the context of the interactions between private citizens considered here. Claims to freedom of conscience are not claims to be free from all influence; and influence that respects the moral agency and rational capacities of an agent is morally licit. Such deliberation promotes

autonomy rather than infringing it. In general, the fact that imposing some constraint would infringe or violate an agent's autonomy is a (defeasible) reason to refrain from doing so.

When it comes to moral views and the conscience-related actions that are the subject of this chapter, two additional considerations generally count against imposing constraints on other agents. The first is value pluralism. Liberal democratic societies like the contemporary United States are founded in part on the recognition that there is not just a single version of the good life that is worth pursuing, and no unique way of ordering one's values that ought to be protected above all others. Accordingly, the state should be organized in a way that makes room for this plurality of values; individual citizens, too, ought to take this point to heart. Recognizing this, then, we can grant that two agents who are pursuing completely different and even conflicting goals may both be genuinely living morally valuable lives. If my own conception of the good life is not the only valuable way to live, this is a reason not to impose my views onto other agents who appear not to share them.

Additionally, we should all recognize that we are fallible reasoners. Given that I am fallible, I may be wrong about what morality requires of me. And, I may also be wrong in my judgment that another agent has gotten *her* moral views wrong. So, the importance of humility and the recognition that none of us is certain to have gotten things right also count against imposing constraints on the conscience-based freedoms of other agents. As Mill admonishes, "We can never be sure that the opinion we are endeavoring to stifle is a false opinion... All silencing of discussion is an assumption of infallibility."¹⁰⁸

Nonetheless, sometimes other agents are justified in imposing constraints onto one's conscience-based freedoms. The task of justifying the imposition of a particular constraint will

¹⁰⁸Mill, *On Liberty*. p. 16-17

be to show that the reasons for imposing it outweigh the reasons against imposing it generated by respect for autonomy, humility, and value pluralism (as well as those generated by the various values of engaging in conscience-related activities, discussed above).

My focus will be on the motivation or justification for imposing a particular constraint on another agent's conscience-based freedoms, rather than the nature of the constraints themselves. When it comes to the kinds of before-the-fact interference that make it difficult or impossible for an agent to exercise some conscience-based freedom, it is impermissible for individual agents to interfere with others *because* of an objection to the content of the moral view held, expressed, or acted on by them. That is, interference with conscience-based freedoms which is motivated by some objection to the *content* of the moral view held by another agent is impermissible, including the conviction that another agent has gotten her moral views wrong, or that it would be bad for others to be exposed to that particular moral view.

In contrast, a given act of interfering with another's conscience-based freedom can be justified by an appeal to preventing harm to others. That is, the classic harm principle given by J.S. Mill in *On Liberty* describes a permissible reason for such interference:

*The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.*¹⁰⁹

There is room for debate regarding what constitutes a harm and which types of harm are sufficiently serious to warrant interference in conscience-based freedoms. T.M. Scanlon argues that two types of harms in particular do not justify state-levied restrictions on freedom of expression. These are (1) harms that are constituted by a person coming to hold a false belief as

¹⁰⁹Mill. p. 9

a result of the expression, and (2) harms that result from actions of third parties who came to believe that those actions were worth performing as a result of the expression.¹¹⁰

Coming to hold a false belief may be thought to harm an agent in two ways. First, holding a false belief may be intrinsically bad for the agent who holds it. Knowledge is commonly thought to valuable and in many cases holding a false belief about some matter will preclude one's coming to have true beliefs or knowledge of that subject. One who falsely believes that Kant's categorical imperative permits treating others as a mere means will not at the same time be able to form correct beliefs about the content of this principle. Second, false beliefs are often instrumentally bad for an agent in that they may frustrate the pursuit of her ends. Seeking to fulfill the Kantian categorical imperative, the false belief that treating others as a mere means is permissible will lead an agent to unintentionally violate that principle in some circumstances. Part (1) of Scanlon's principle forbids restricting acts of expression on the basis that they would lead to these types of harm.

Part (2) of Scanlon's principle rules out censoring the advocacy of moral views because others coming to accept those views may lead them to act in ways that cause harm. Consider a speaker who argues that women are less productive than men in the workplace, and for that reason employers ought to preferentially hire men over women. An employer who engages in sex-based discrimination in the workplace after attending this talk harms the women against whom he discriminates. But these harms cannot justify imposing restrictions on the acts of expression which advocate for such discriminatory policies.

Scanlon's argument is that citizens who regard themselves as autonomous agents could not accept a government which imposed restrictions against expression in order to prevent these

¹¹⁰Scanlon, "A Theory of Freedom of Expression."

kinds of harms. Scanlon explicitly states that this is not an argument about what private citizens owe to one another with regard to freedom of expression. I am not presuming to make claims about freedom of expression generally, only about the expression of sincerely held moral views. However, within this realm, I take it that the value of moral discourse and the importance of being free to deliberatively evaluate and adopt one's own moral views justify limitations on the sorts of harms which can justify interference with conscience-based freedoms by individual agents similar to those advanced by Scanlon.

Attending to the different propensities of each of the three categories of conscience-based freedoms to cause harm to other agents, we will see that imposing restrictions on holding moral views will never be justified, restrictions on sincere expressions of conscience will rarely be justified, and the largest category of justifiable restrictions will be those that apply to conscience-based actions.

In the normal course of things, the mere fact that an agent holds some moral view does not causally affect other agents and so cannot harm them on traditional understandings of what it is to cause harm.¹¹¹ Barring outrageous circumstances,¹¹² then, it is never permissible for individual agents to intentionally interfere with the rational deliberative acquisition of another's moral views in order to control the content of that agent's moral views. That is, influencing another agent to adopt (or reject) some moral view by way of coercion, manipulation, brainwashing, or indoctrination is never permissible. Although an agent may be morally wrong in holding certain moral views, she nonetheless has an absolute right not to have the moral views of others imposed upon her; she has a right to form her own moral views.

¹¹¹There is some debate about whether a belief by itself can wrong another agent. Cf. Basu, "Can Beliefs Wrong?"

¹¹²If we granted that brainwashing one person was necessary in order to save the lives of thousands, brainwashing probably becomes permissible. But in the course of normal life, this will never be justified.

The ways in which expressions of conscience can cause harm were discussed above. All things considered, expressions of sincerely held moral views will rarely cause significant harm to others and thus the scope of justified interference with the expression of conscience will be relatively limited. Because in principle *any* action could be required by some agent's conscience, the scope of justifiable limitations on conscience-based actions will be much larger.

Finally, consider constraints on freedoms of conscience that take the form of costs imposed on agents for holding, expressing, or acting on their own moral views. Such costs may be permissibly imposed by individual agents even in response to conscience-based actions which do not cause harm to others. In this realm, constraints that are motivated by the content of a moral view held, expressed, or acted on by another agent are justified. Individual moral agents acting as private citizens have wide latitude to pursue their own vision of a good life. A part of that latitude includes the permission to choose with whom they associate or form significant relationships, what organizations to join, and which businesses to patronize for virtually any reason they like. Accordingly, they may permissibly choose not to begin or to end relationships with another agent on the basis of that agent's moral views. Individual agents are, similarly, permitted to engage in moral criticism of one another on the basis of moral disagreements, so long as such criticism is respectful and promotes moral discourse.

VI

Here, I argued that freedom to choose one's own moral views, to express sincerely held moral views, and to act in accord with those moral views is important because of the connection between an agent's deeply held moral views and her identity as a person, and because exercising autonomous choice within these domains is necessary in order for an agent to possess integrity.

However, this value does not generate absolute freedom in any of these three areas. Morality itself constrains the range of the moral views that an agent may permissibly hold, of the manners and contexts in which she may express her views, and of the actions she may permissibly perform in following her conscience. Further, other individual moral agents may permissibly act in ways that prevent or increase the difficulty of the expression of one's moral views, or of one's acting on those moral views. And, even where it is impermissible for another agent to interfere with one's conscience-based actions, it is nonetheless often permissible for others to react to such actions in ways that impose undesirable costs on the agent.

The current discussion focused solely on the interactions between two individual agents interacting with one another as private citizens. It is in these interpersonal relationships that freedom of conscience has the greatest breadth. When an agent acts as a representative of some institution or practice, when she has taken up a particular role with its own responsibilities, the specific moral obligations that attach to that role and the details of the context in which it is exercised are apt to impose additional restrictions on conscience-based freedoms. Government officials, teachers, judges, military personnel, religious leaders, and health care providers are all subject to professional moral obligations and all act within contexts which may change the contours of conscience-based freedoms in some fashion. For example, government officials ought not to impose costs onto citizens on the basis of their moral views; and religious leaders may rightly be limited in the moral views they can express by the religious organization of which they are a member. Limits to freedom of conscience must be considered separately within the context of each of these disciplines and the roles inhabited by an agent. In the final chapter, I will turn to a discussion of freedom of conscience for physicians within medical practice.

CHAPTER FOUR: FREEDOM OF CONSCIENCE IN MEDICINE

I

Because medical decisions are often moral decisions, and because physicians are in multiple respects gatekeepers to medical services, it is frequently the case that a physician is in a position to either frustrate or promote a patient's freedom to act in accord with her conscience. And, because physicians increasingly practice within larger health care institutions rather than in independent private practices, they too often find themselves in positions in which their conscience-based actions are subject to regulation by their employers. Add to this the fact that contemporary medical practice encompasses a number of morally contested services – including abortion, physician aid-in-dying, and sex reassignment surgery, to name just a few – and the imperative to consider the role of conscience within medicine emerges.

In this chapter, I will focus primarily on the role that the conscience of individual physicians plays in shaping the delivery of health care, and the question of what regulations or protections are justifiable for a physician's conscience-based actions within the realm of patient care. I will not discuss how we should treat the consciences of other health care professionals, whose distinct roles may or may not give rise to unique considerations that would necessitate different treatment of their conscience-based actions within health care delivery. Nor will I discuss the role that physician conscience has in those areas of medical practice which do not involve direct patient care. I will focus on the unique interaction between a physician and the individuals who come to her as patients.

II

Discussion of the role of conscience within medicine has largely focused on cases in which the conscience of a medical provider leads her to refuse a patient's request for some medical service.¹¹³ In paradigm cases, the requested service is one which is morally contested by both ethicists and the general public, like elective abortion or medical aid-in-dying. Patient and provider interests are typically portrayed as at odds: the provider has an interest in protecting her conscience by refusing the patient's request, whereas the patient has an interest in receiving the requested service even if its provision would burden the provider. The implication is that protecting physician conscience generally requires subverting patient interests. Framing the discussion with this focus on the conflict between a physician's conscience and a patient's interests has led some to claim, like Julian Savulescu does, that "a doctor's conscience has little place in the delivery of modern medical care."¹¹⁴ Given a picture on which the only function of conscience is one that undermines patient interests, the disavowal of conscience in medicine may seem noble.

However, this view of the role of conscience within medical care is too narrow. Though there are certainly cases in which a physician's conscience prompts her to refuse to provide certain types of care to her patients, such conflicts represent only a small fraction of the role that physician conscience plays in the delivery of medical care. First, the felt obligations produced by the mental process of conscience can either be negative, prohibiting some action, or positive, requiring the performance of some action (in the same way, moral commitments can either

¹¹³Cf. Wicclair, "Conscientious Objection in Medicine"; Savulescu, "Conscientious Objection in Medicine"; Giubilini, "The Paradox of Conscientious Objection and the Anemic Concept of 'Conscience': Downplaying the Role of Moral Integrity in Health Care."

¹¹⁴Savulescu, "Conscientious Objection in Medicine."

forbid or require physicians to provide patients with certain types of care). The much-discussed refusals of care in so-called “conscientious objection” represent the negative aspect of conscience. In contrast, this positive aspect of conscience in medicine has largely gone unexplored, though there is an emerging literature on what has been termed “conscientious provision of care.”¹¹⁵ In such cases, the conscience-based interests of the physician can align rather than conflict with the interests of her patients (though they may still conflict with the interests of her employer, or of the state).

Restricting discussion of conscience in medicine to cases of conflict over morally contentious medical services further suggests that it is only in certain limited spheres of medical practice that conscience arises. But this, too, is a mistaken picture. Physicians have special moral obligations to their patients by virtue of their professional role.¹¹⁶ A good physician, I will argue, does not merely recognize and act within the scope of these obligations; she takes them on as moral norms to which her conscience appeals in evaluating her actions. Recall too that the mental process of conscience operates constantly and automatically in the background of our conscious experience, comparing our internalized moral norms to considered actions and producing dictates that either forbid or require some action in accord with those norms. Given that so many of the decisions that must be made in the course of medical practice have moral implications, it becomes clear that a physician’s conscience plays a much larger role in the delivery of health care than just leading her to refuse to provide a few morally contested services.

¹¹⁵Cf. Harris, “Recognizing Conscience in Abortion Provision”; Buchbinder, Lassiter, Mercier, et al., “Reframing Conscientious Care: Providing Abortion Care When Law and Conscience Collide.”

¹¹⁶Cf. Beauchamp and Childress, *Principles of Biomedical Ethics*; American Medical Association and Council on Ethical and Judicial Affairs, *Code of Medical Ethics of the American Medical Association*.

That physicians have and are guided by the mental process of conscience and the moral commitments to which conscience appeals is, on the whole, a good thing. We certainly do not want the profession of medicine to be practiced entirely by physicians who lack consciences or moral commitments altogether. Nor do we want physicians to have consciences and moral commitments but to somehow be capable of turning these off or abandoning them at the door to the clinic. Moral commitments do not work in this way: if one can simply ignore or abandon a commitment at will, this is grounds for doubting that one really had the commitment in the first place. The mental process of conscience makes vivid our sense of moral obligation, and it is a good thing when moral agents recognize and are motivated by this sense of moral obligation despite the fact that such regard sometimes leads agents to act wrongly.

Those, like Savulescu quoted above, who lament the intrusion of physician conscience into the practice of medicine presumably *do* want physicians to have regard for and be motivated by moral requirements: the requirements of medical morality. It is unrealistic to require that those who take up the office of physician rid themselves of all their non-professionally based moral commitments. But allowing that physicians do have some “personal” moral commitments, we cannot demand that they completely ignore the force of these commitments in their professional life. It is likely that becoming accustomed to ignoring one’s sense of moral obligation, especially in a sphere of life which is, for many physicians, so central to their identity as a person, will lead to a general diminution of respect for that sense of obligation. I am skeptical that it is possible, from a psychological perspective, to uniformly subvert one’s personal moral commitments to one’s professional moral commitments for forty to eighty hours a week without globally diminishing one’s regard for one’s moral commitments.

As a practical matter, there is both philosophical and professional debate about the precise scope of a physician's professional moral obligations. In the face of this disagreement, there is no alternative but for individual physicians to make judgments about what professional ethics requires of them in any given situation. It is inevitable that these judgments will be made in light of the full corpus of their moral commitments, both professional and personal. This will include attending and giving weight to the dictates of one's conscience when they are present.

Although it is unrealistic to expect physicians to abandon or uniformly subvert their personal moral commitments in their professional lives, we *can* reasonably expect that a physician commit to her professional moral obligations when she enters into the medical profession and work to internalize these into her psychology such that they are subject to the mental process of conscience. We can expect that in committing to these professional moral obligations she comes to recognize the ways in which her professional obligations constrain her personal moral commitments in the practice of medicine, and that she find a way to reconcile her personal commitments with the professional commitments she takes on. The sense in which it is true that personal moral values do not belong in the delivery of health care is that they ought not to be the *focus* of a clinical encounter. The adoption of and commitment to professional ethical obligations and other standards of conduct is a part of physician professionalism, the teaching of which is emphasized in both undergraduate and graduate medical education.¹¹⁷

¹¹⁷For a description of medical professionalism, see ABIM Foundation, ACP-ASIM Foundation, and European Federation of Internal Medicine, "Medical Professionalism in the New Millennium"; Standards of accreditation for medical schools also require the teaching of professionalism, see Liaison Committee on Medical Education, *Functions and Structure of a Medical School: Standards for Accreditation of Medical Education Programs Leading to the M.D. Degree*.

III

Professional roles and the obligations they impose on those who take them up can limit the scope of legitimate conscience-based freedoms outlined in the previous chapter. As private citizens, physicians enjoy the same conscience-related freedoms as other moral agents. Our task here will be to look at the special moral obligations to which physicians are subject, and to discuss whether and how those obligations further limit and shape the scope of permissible conscience-based actions for those acting in the capacity of physicians.

The first step, then, is to delimit the relevant moral obligations that physicians are under. Edmund Pellegrino argues that the basis of medical morality and the obligations borne by physicians to their patients can be found in the nature of the patient-physician relationship.¹¹⁸ He holds that the patient-physician relationship is unique in virtue of its bringing together one person made vulnerable by the experience of illness and another who professes to be a healer. The focus of the interaction between these two moral agents – the patient and the physician – is to come to a healing decision, one that will restore or improve the patient’s bodily harmony insofar as possible. A healing decision is good to the extent that it fits that particular patient – to the extent that it is consistent with her values – beyond merely improving her physical health. For Pellegrino, “It is in the moment when physician and patient together decide what should be done that medicine as medicine comes into being.”¹¹⁹

¹¹⁸Pellegrino, “Toward a Reconstruction of Medical Morality.” Some thinkers have objected to this centering of the entirety of medical morality on the patient-physician relationship, noting that there are areas which can properly be considered medicine that do not rely on this clinical relationship as Pellegrino understands it: for example, the pursuit of clinical research or public health efforts. Though I think that there is merit to these concerns, the questions engaged in this chapter focus on the role of the physician’s conscience in the provision of care to patients. This situates our inquiry firmly within the realm of the patient-physician relationship; accordingly, it is appropriate to focus on the physician’s obligations to patients that arise from this relationship.

¹¹⁹Pellegrino. p. 68

Although both the patient and the physician in this relationship are moral agents who must decide together how to proceed, it is essential to recognize that there is an inherent power imbalance in the relationship. For Pellegrino, the fact of illness is key to defining the patient role in the physician-patient relationship:

*Persons become patients when they acknowledge that they are sufficiently concerned over a physical or psychological symptom to believe they need help. In this state, to varying degrees, they are anxious, dependent, in pain, disabled, and extremely vulnerable and exploitable. They are no longer free to pursue the things they want out of life without impediment.*¹²⁰

The role of patient is defined by that individual's subjective assessment of illness. This admission of illness, in turn, makes the patient vulnerable. At a minimum, illness requires a person to redirect a portion of her attention from her outward pursuits inward to her ailing body; at the worst it frustrates those pursuits completely and brings concerns about one's own mortality to the fore. Lacking the knowledge or skill to determine either what is wrong or what ought to be done about it on her own, the ill person must depend on another – the physician – to aid her in these determinations. Having come to a determination about the appropriate treatment plan, the patient again relies on the physician to provide her with access to the necessary treatments. This power imbalance is further exacerbated in contemporary Western medicine, I would add, by the increasing complexity of our health care systems, including the difficulty of navigating health insurance reimbursement schedules and the proliferation of specialist based-care.

So, the patient-physician relationship is one in which two moral agents come together to pursue a common goal of healing, but within which there is an inherent power imbalance.¹²¹ For

¹²⁰Pellegrino, "Toward a Virtue-Based Normative Ethics for the Health Professions." p. 267

¹²¹This picture on which a patient comes to a physician made vulnerable by illness picks out central cases of medical care, although we can acknowledge that physicians and patients do interact with one another under other circumstances in contemporary health care practice. Purely preventative care like annual physical exams or cases of elective cosmetic surgery, for example, fall under the scope of contemporary medical practice but may not involve illness as such. The moral obligations physicians owe to patients are derived from features of these core instances of

the purposes of this discussion, I will highlight four (interrelated) moral obligations that physicians owe to patients within the context of this relationship: respect for the patient as a moral agent, the requirement to inform and counsel patients, beneficence, and non-abandonment.

As moral equals, both the physician and the patient must show one another the respect due to other moral agents as such. This includes both respect for the patient's autonomy and respect for her values and moral commitments. The relevant kind of respect is what Stephen Darwall terms *recognition respect*. To have moral recognition respect for another person as a moral agent is to be disposed to weigh the fact of her moral agency appropriately in one's deliberations about how to act, and to act accordingly; it is to view the fact of her agency as generating restrictions on the moral permissibility of actions connected to it. The same is true, *mutatis mutandis*, of having respect for a patient's values or moral commitments. Darwall contrasts this kind of respect with *appraisal respect*: to have appraisal respect for someone as a moral agent is to hold an attitude of positive appraisal toward that person's moral agency; to have appraisal respect for her moral commitments is, likewise, to positively appraise those commitments.¹²²

Physicians owe patients recognition respect, though not necessarily appraisal respect. That is, a physician can negatively evaluate the choices a patient makes as a moral agent or can regard her values as wrong and still recognize that the patient's choices and values must be given weight in the physician's own deliberations about how to treat the patient. Specifically, the respect that a physician owes to each of her patients requires that she regard the values the patient brings to the clinical encounter as having the same weight for the patient that the

medical care; insofar as some particular encounter does not fit the model we can ask whether these moral obligations retain their full force or become modified or attenuated.

¹²²Darwall, "Two Kinds of Respect."

physician's own values have for her. This kind of regard is incompatible with any attempt to impose one's own values onto the patient, or with dismissing the patient's values and goals as irrelevant to the decision to be made. Respect for a patient's autonomy requires that the physician recognize that it is ultimately up to the patient herself to decide what course of action she will pursue. Accordingly, respect for autonomy begets the negative obligation to refrain from coercing or otherwise attempting to exert control over a patient. It also involves positive obligations to promote patient autonomy, including the obligation to inform and counsel patients about their illness and their diagnostic and treatment options.

For Pellegrino, the information gap between the physician and the patient generates an obligation for the physician to close that gap, in order to promote the patient's ability to make a good medical decision for herself. To this end, the physician must explain the patient's illness as well as all the alternative treatment and care options open to her. Recognizing that medical decisions are almost always value decisions, Pellegrino argues that in addition to explaining technical and scientific information, "the physician has a responsibility to underscore the moral questions so that the patient can act in a way consistent with his or her belief system."¹²³ This understanding of the proper role of moral deliberation in the patient-physician relationship and the medical decision process is echoed by Ezekiel and Linda Emanuel in their endorsement of a deliberative model of the patient-physician relationship. On this conception, part of the physician's proper role is to engage with the patient about what health-related values are worth adopting and pursuing. Emanuel and Emanuel argue that such deliberation about the best health-related values to adopt and pursue is integral to promoting patient autonomy, which requires

¹²³Pellegrino, "Toward a Reconstruction of Medical Morality." p. 68

critical assessment and affirmation of the values that support one's actions, in addition to the freedom to choose one's preferred medical treatments.¹²⁴

The moral and legal imperative to obtain informed consent from patients before engaging in any substantial medical intervention¹²⁵ captures both the requirement that physicians ensure that patients are informed and the obligation to respect a patient's autonomy. Like all moral requirements, the obligation to obtain informed consent requires further specification in order to be sufficiently action-guiding. This includes more detail about what information must be provided to patients in order for their decisions to count as informed, as well as what conditions undermine the legitimacy of her consent. I emphasize two points here: the first is that the requirement of informed consent entails that physicians inform patients about *all* of their available medical options, including those options that the physician may be unwilling to provide for conscience-based reasons. Second, engaging in moral deliberation with a patient does not itself undermine morally legitimate consent. However, the inherent power imbalance in this relationship should not be forgotten, and the physician must take care to ensure that counseling and deliberation do not move from persuasion to coercion or manipulation. To this end, the physician must express her own views respectfully, while showing due deference to the patient's own values and commitments.

The physician, in professing to help her patients, incurs an obligation of beneficence: the obligation to act in the patient's interests rather than in her own, and to promote the patient's

¹²⁴Emanuel and Ezekiel, "Four Models of the Physician-Patient Relationship."

¹²⁵A full treatment of the requirement of informed consent would need to specify what makes an intervention "substantial." Typically, the riskier or more invasive an intervention is, the higher the bar for obtaining informed consent. For example, taking a patient's blood pressure poses essentially zero risk and is minimally invasive; mere non-refusal of this procedure is thus usually sufficient. In contrast, any type of surgery will pose non-negligible risks and be significantly invasive. Thus, a thorough discussion of the risks involved and the details of the procedure to be performed along with an explicit consent (usually including a signed form) from the patient are necessary to meet the requirement of informed consent.

good. This obligation requires that the promotion of the patient's interests be the primary focus of the medical encounter. Additionally, the relative vulnerability of patients raises the concern that a physician may use her patients as mere means to fulfilling her own interests. In order to abate this concern, the obligation to promote a patient's good is typically understood as including a component of effacement of the physician's own interests: that is, the physician generally must place the patient's interests above her own when they come into conflict. The details of how patient interests and goods should be understood, what counts as promoting those interests, and to what degree the physician is required to efface her own interests in the pursuit of her patient's good are all subject to debate.

Pellegrino argues that a good decision must be more than just scientifically correct. It must also "fit this particular person, at this age and situation in life, with this person's aspirations, expectations, and values."¹²⁶ Given that many medical decisions inescapably involve judgments about what the pursuit of a good life looks like, and given that the physician owes respect to her patients as moral agents in their own right, she cannot presume to know what is good for her patient without consulting that patient as a moral agent. Thus, the obligation of beneficence requires the physician to "act in such a way that the patient's interpretation of the good life will be protected and that he will have an opportunity to make the value choices that so often underlie the decisions about what should be done."¹²⁷ This point does not imply that a patient's interests are necessarily identical to her subjective interpretation of those interests, or that a patient can never be mistaken about what is in her own interest. Rather, Pellegrino's claim only requires holding that an appeal to (what the physician takes to be) some objective standard

¹²⁶Pellegrino, "Toward a Reconstruction of Medical Morality." p. 67

¹²⁷Pellegrino. p. 67

alone is insufficient to determine what is good for a patient: it is necessary to take her values into consideration even if those values do not exhaustively determine her good.

Finally, physicians owe a duty of non-abandonment to their patients arising from the fiduciary nature of this relationship. Non-abandonment is sometimes understood as a requirement of the broader duty of fidelity to one's patients.¹²⁸ The physician who professes to be able to help the dependent, vulnerable patient incurs an obligation of fidelity to provide that patient with healing services within her scope of competence or to assist in the transfer of the patient's care to another physician when the patient's needs exceed her own capability to offer help.

The foregoing discussion of these obligations focuses on the ways in which a physician must act in order to fulfil them. Insofar as her actions fall short of these standards, a physician is morally criticizable. But a good physician does not merely begrudgingly fulfil these obligations to patients: a good physician exhibits the right kinds of attitudes and motivations in her interactions with patients in addition to acting within the scope of these requirements. That is, the character of a physician is also subject to moral praise or criticism, over and above her actions.¹²⁹ For example, a good physician must feel and show compassion for her patients. Compassion is a kind of "suffering with"; to feel compassion for a patient requires that the physician penetrate to some extent what it is like to be ill for that patient in the moment she presents to the clinical encounter,¹³⁰ and requires that the physician have an active regard for the welfare of the patient.¹³¹

¹²⁸Beauchamp and Childress, *Principles of Biomedical Ethics*. p. 324-25

¹²⁹Although certainly a physician's character and actions are intimately related.

¹³⁰Pellegrino, "Toward a Reconstruction of Medical Morality." p. 69

¹³¹Beauchamp and Childress, *Principles of Biomedical Ethics*. p. 37-39

A complete discussion of the character traits embodied by a good physician is beyond the scope of this inquiry. But what I do want to emphasize is that a good physician is one who is committed to the moral obligations delineated above in more than just action: that is, the good physician will have incorporated these obligations into her psychology as moral commitments and will work to internalize these as moral norms to which the mental process of her conscience appeals. That is, having endorsed these moral obligations as norms to which she is beholden, a physician ought to carefully consider what they require of her in the relevant situations and to then act accordingly. This thoughtful application of her professional moral obligations and the conscious choice to act on these requirements can in time lead to the internalization of these norms into her System 1 psychology such that the mental process of conscience will have access to them.¹³² This process is facilitated by her learning and working in an environment where her colleagues, administrators, and patients all expect that she will adhere to these norms.

This is to say that a physician's moral freedom to hold the moral views she chooses is thus limited by her voluntary entry into the medical profession: this role requires that she incorporate certain moral commitments into her conscience, and she is morally criticizable insofar as she fails to do so.¹³³ Whereas, for example, police officers are permitted to engage in deception of those that they serve in order to do their jobs and so are not required to commit to anything like a principle of informed consent, physicians, by virtue of their professional role, *are* required to endorse (and abide by) the moral principle of informed consent described above.

¹³²See the discussion of changing one's internalized moral norms in Chapter One.

¹³³Learning and adopting these professional norms is not solely the responsibility of the individual physician. Medical education ought to and increasingly does include instruction related to professional ethics and moral obligations. Those who organize and operate medical schools and residencies bear a responsibility to design curricula that will foster students' understanding of and commitment to these professional moral obligations.

It is not merely acting in ways that breach these obligations that renders a physician subject to moral and professional criticism: it is also the failure to subjectively commit to and then properly internalize these principles. Consider the obligation of beneficence, which requires that physicians promote patient interests. A physician who in fact promoted her patient's interests solely because she knew that failing to do so would make her liable to a malpractice suit would technically fulfill this moral obligation. But she would be criticizable for not being *committed* to this moral obligation in the right way. She would not regard this moral principle itself as generating a reason for her to promote her patient's best interests and would not feel obligated by her conscience to follow this requirement. Rather, she would view this moral obligation (or its legal counterpart) as a fact to be taken into consideration when pursuing her own interests, and she may violate it if she could be sure that she would not be sued, without experiencing any guilt. If such a physician always acted in accord with the obligation of beneficence, her actions would not be morally criticizable. But still something would be lacking: a truly *good* physician takes on her professional moral obligations as commitments, the kind of commitments which play into her System 1 psychology such that her conscience will urge her to comply with them.

There is one more point to make about a physician's conscience. As was discussed in Chapter Two, all moral agents ought to engage in critical reflection on and evaluation of their internalized moral norms in order to work on having a well-formed conscience. This requirement of course applies to physicians as moral agents. But the morally fraught nature of the medical encounter imposes additional requirements on physicians, who ought to reflect not just on what moral values they will endorse for themselves but also on the moral values they know to be or can expect will be held by their patients. Understanding a patient's moral values,

even if one disagrees with and criticizes them, is necessary for the full expression of compassion for that patient. Consider, for example, a patient who is a member of the Church of Latter-Day Saints (a Jehovah's Witness). One relevant moral value for members of this faith is the prohibition against donating or receiving blood products, which must be observed in order to be eligible for eternal salvation. Someone who does not share that value or the religious beliefs that underlie it can nonetheless understand how central the goal of achieving eternal salvation must be to that patient's vision of a good life, and can understand why, on the basis of such a belief, that patient may choose to forego blood transfusions even when doing so would be necessary in order to save her life.

Further, the physician must consider the ways in which her own values as well as the values of the patient are expressed or frustrated in the various diagnostic and treatment modalities available to address a patient's illness in order to effectively engage that patient in deliberative counseling. For the Jehovah's Witness patient, this would require gaining an understanding of what counts for her as a forbidden blood product, and which procedures or surgeries do not require or could be modified to eliminate the administration of blood products. Similarly, a physician endorsing the principle "first, do no harm" must consider when risky procedures or potentially ineffective treatments may cause objectionable harm to the patient in order to be able to articulate this concern in the medical decision-making process.

IV

The question at the core of the conscientious objection debate is whether or not physicians are ever permitted to refuse to provide legal, safe, and effective medical services to competent patients who request them, when and because providing said service would violate the

physician's conscience. Classic examples include physicians who object on moral grounds to performing abortions or sterilizations, or to writing prescriptions for contraceptives or for a lethal dose of medication as a part of medical aid-in-dying. Such refusals clearly place at least some burden on patients, and so call for special justification.

Most defenses of a right to such refusals emphasize the connection between a physician's conscience and her moral integrity. Some argue that moral integrity is valuable to individuals because of its connection to one's identity as a moral agent, whereas violation of one's moral integrity (*vis-à-vis* violation of one's conscience) constitutes a self-betrayal and leads to loss of self-respect.¹³⁴ On other accounts, integrity is valuable not just to the physician who possesses it, but also to the community of moral reasoners in which the physician of integrity acts, because gaining and evaluating moral knowledge is a social process that requires each moral reasoner to make moral judgments and take them seriously.¹³⁵ The value of moral integrity, then, is argued to outweigh the burdens that such refusals impose on patients in at least some circumstances. Thus a limited right to conscientious objection by physicians is established, and different authors typically spell out different limits on this right, usually focusing on minimizing the burdens that patients bear as a result of such refusals (e.g., by requiring refusing physicians to refer patients to another physician willing to perform the requested service, or by requiring the provision of life-saving emergency care over physician objections).

This focus on the value of moral integrity as grounding a right for physicians to refuse to engage in certain types of medical care makes sense only if it is assumed that such refusals do in fact protect the physician's moral integrity. Consider a physician who refuses to write a

¹³⁴Wicclair, "Conscientious Objection in Medicine."

¹³⁵Cf. McLeod, "Taking a Feminist Relational Perspective on Conscience"; Baylis, "A Relational View of Conscience and Physician Conscientious Action."

prescription for a lethal dose of medication in response to a terminally ill patient's request for such in a permissive jurisdiction.¹³⁶ The classic depiction of this case emphasizes that the physician understands herself to be morally prohibited from assisting another agent in taking her own life. Nothing else is said about her moral views. It is then maintained that granting her a right to refuse her patient's request allows the physician to avoid acting in a way that she finds to be morally problematic, thus preventing her from violating her conscience and enabling her to preserve her moral integrity.

But any real person has a multitude of moral commitments, and often more than one such commitment is relevant to the situation in which she must decide how to act. We just saw, for example, that in entering the medical profession a physician takes on a host of moral commitments to her patients. These commitments include a moral obligation to promote the patient's interests, as well as a commitment to non-abandonment of one's patients. Insofar as a physician lacks such commitments, she is morally (and professionally) criticizable. But insofar as she has really taken on these commitments, when a patient requests a service that the physician has moral objections to providing, conflict will arise not just between the physician's moral values and those of the patient, but also between two or more of the physician's own deeply held moral commitments. In the case at hand, the physician may understand refusing to write a prescription of a lethal dose of medication as required by a norm to promote and protect life. But she may also understand this refusal as a violation of her commitment to a norm to promote her patient's best interests, especially in the context of a long-standing relationship with a patient who is clearly suffering and who demonstrates that she has thoroughly considered her options before making such a request. Even if referral to another physician is possible within a

¹³⁶As of 2020, medical aid-in-dying is legal in ten jurisdictions in the US: Oregon, Washington, Montana, Vermont, California, Colorado, the District of Columbia, Hawaii, New Jersey, and Maine.

reasonable timeframe, completely offloading care of this patient may be understood as a (problematic) form of abandonment of her patient.

The point here is simply that commitments to one's patients can be just as deep and central to a physician's moral integrity as the moral values and commitments that give rise to her convictions that participating in certain types of medical care is morally wrong. In such cases, it is not clear that refusing to participate in care will necessarily preserve moral integrity, or that refusal will be the optimal path even considering only the physician's own perspective. If the argument in favor of a right to conscientious refusal of care relies on the value of moral integrity, cases in which refusal does not straightforwardly protect moral integrity are not necessarily protected by such a right.

Certainly, it will sometimes be the case that maintaining her moral integrity does require a physician to refuse a patient's request for a particular form of medical care. But even when the balance of obligations weighs toward refusal, the force of her obligations of beneficence and non-abandonment remain. That is, refusing a patient's request will often carry with it a moral remainder stemming from the fact that in refusing one compromises on one's moral commitments to patients, even when one has determined that refusal is the right course of action in the situation at hand. Idealized discussions that depict conscience-based refusals as cost-free for the physician who engages in them fail to take account of this important part of the moral landscape.

It may be objected that this is a naïve picture of commitment to patients that does not obtain in reality. It is true that there are likely a number of physicians who do not take their professional moral obligations to patients seriously in the way I have described. However, I maintain that such physicians are morally criticizable to that extent. They do not demonstrate the

proper regard for their privilege and power in the face of a patient who trusts them to provide help in a time of vulnerability and dependency. But further, the idea that a physician's professional moral commitments may be just as deeply held as some of her "personal" moral beliefs, and that these two types of commitments can be brought into conflict in the course of patient care is not merely a theoretical speculation: empirical evidence suggests that many physicians do in fact exhibit this kind of commitment to their professional moral obligations.

In an interview study of health care providers working on the Labor and Delivery unit of a large teaching hospital, Czarnecki et al. (2019) found that many providers who had moral objections to participation in abortion care nonetheless viewed a commitment to care for all patients as a moral imperative.¹³⁷ This commitment to patients complicated participation decisions surrounding abortion care. For example, the study quotes one anesthesiologist with a moral opposition to abortion who nonetheless found themselves participating in abortion care in a capacity that they were able to justify by appeal to the interests of the patient:

*"...the mother was experiencing severe bleeding, I felt a little awkward, but I felt like the termination is complete, this mother really needs me right now...I'm going to anesthetize her so they can try and stop the bleeding. I'm probably aiding and abetting in a termination, but I can feel fairly comfortable that my primary focus is on the mother."*¹³⁸

This provider found themselves in a clinical situation in which there was no clear path to avoid violating their moral commitments. On the one hand, they felt the moral weight of participating in an act that they considered to be wrong in itself. But on the other hand, they felt the pull of their moral obligations as a physician to care for a patient in need. In this case, the physician navigated the conflict by opting to participate in care that they found on its face morally objectionable, in order to fulfill their obligations to the patient in front of them. The moral

¹³⁷Czarnecki et al., "Conscience Reconsidered."

¹³⁸Czarnecki et al. p. 184

remainder here was the violation of their conviction that participation in abortion is morally wrong, which they were able to mitigate somewhat by appeal to the importance of moral commitments to patients, but not to eliminate altogether. Deciding that the right course of action in this case was to participate in the objected-to procedure did not eliminate the tension between these two conflicting values. We can readily imagine that, had this physician decided that the right course of action was to refuse to provide anesthesia for this procedure, they would have still felt the force of having violated their obligation to care for patients. This suggests that refusals to provide contested care do not always straightforwardly protect physician moral integrity, because physicians often view refusals as violating their deep moral commitments to patients.

In addition to viewing a commitment to care for patients as a moral imperative, Czarnecki et al. report that study participants “considered and respected the beliefs of others as much as their own, and this was central to their idea of a “good” caregiver.”¹³⁹ This suggests that the professionals in this sample took seriously the obligation posited above to respect the values and dignity of their patients, even in the setting of moral disagreement.

In addition to demonstrating that physicians take their moral commitments to patients seriously even when these commitments conflict with their personal moral values, Czarnecki et al found that personal moral values are often shaped or changed in the course of a physician’s professional experiences with contested medical services. They report that many participants described not having fully worked out moral stances on abortion or participation in abortion care. Those who did enter medicine with what they considered to be clear views on the moral permissibility of abortion found that their experiences working in a context in which abortion care is provided caused them to reevaluate those views and sometimes resulted in a shift in their

¹³⁹Czarnecki et al. p. 188

moral commitments. Such shifts occurred in both directions, that is, some providers who came to this work with strong opposition to abortion came to view abortion at least in certain circumstances as morally permissible, and some providers who initially strongly supported a woman's right to choose abortion became more conservative when confronted with the realities of on-the-ground abortion work.

This finding suggests that physicians do treat their moral commitments as open to revision in the face of conflicts, as I have suggested (following Bennett) that all moral agents ought to do. It further supports the contention that attempts to dissociate "personal" moral values from professional moral commitments are misguided. One's role as a physician is integral to one's identity as a person, and professional and personal experiences inevitably bleed into one another. Calls to keep certain values out of medicine on the basis of this distinction are ill-considered insofar as they ignore this reality. Discussions of the permissibility of or right to conscience-based refusals of care must take the reality of these complexities into consideration if they are to be applicable to the actual practice of physicians.

V

Having set forth the moral obligations that physicians incur as a result of entering the profession, and with an understanding of the proper relationship between a physician's conscience and those professional obligations, we can now discuss the moral permissibility of conscience-based refusals of medical care. It is my view that physicians are sometimes morally permitted to refuse a patient's request for a legal, safe, effective medical service on the grounds that providing her with that service would constitute a violation of the physician's conscience.

Ultimately, the permissibility of a refusal will come down to an assessment of the balance of benefits and burdens in the case at hand. Conscience, we have seen, is not indefeasibly valuable, and the scope of moral freedom to act on one's conscience is limited both by one's particular moral obligations and by the harm that so acting may cause to others. Nonetheless, the ability to shape one's life in accord with one's deeply held commitments is important: both for those acting in the capacity of physician and for those seeking care as patients. Though they are morally contested, the medical services that fall within the scope of this debate are just those that have been judged to be legal, safe, and effective by society. Thus, a strong argument can be made that any of these services promote the health-related interests of the patient who receives them; by the same token, denials of such care are liable to be detrimental to a patient's health-related interests. Permissible refusals must largely be determined on a case-by-case basis, but we can describe some parameters that must be met in order for a given refusal to be one that might qualify as permissible.

To begin with, we ought to attend to the way in which a physician comes to the decision to refuse a patient's request for care. Respecting the patient as a moral agent whose judgments carry the same weight as the physician's own judgments requires that the physician earnestly consider the patient's request, as opposed to dismissing her request out of hand. Even in the context of a standing moral opposition to the requested service, the physician owes it to her patient to take the time to consider the request in the specific context in which it has been made. She ought to treat requests for services she is morally opposed to as providing conflicts that offer an opportunity to re-evaluate her moral commitments, in the ways described above and in Chapter Two.

This is a case in which something important is at stake, which calls for careful moral deliberation. A physician is criticizable to the extent that she deliberates negligently. One requirement of earnest deliberation is that she has her factual information straight: a refusal to provide requested care which arises from a misunderstanding of the relevant medical facts, for example, negligently and wrongly burdens a patient.¹⁴⁰

In considering a patient's request, the physician must attempt to understand the patient's values and to see how those values have led her to make *this* request in *these* circumstances. She must further consider several relevant features of the context in which she would refuse the patient's request. She must attempt to determine the burden that her refusal will place on the patient. One important factor that impacts how burdensome a refusal is to a patient is the availability of another physician who is willing to provide the requested service. If there is another physician willing to provide the care in that same clinic visit or in the same hospital stay, the refusal may place no or very little burden on the patient.¹⁴¹ In some cases, another willing physician is available, but transfer of care will require the patient to return at another time for a separate appointment, or to travel some distance to another clinic. How burdensome these logistical hurdles are will depend on the nature of the requested service (is it time-sensitive? Will the patient remain in pain or distress until she receives it?) as well as patient-specific factors like the practical and financial impact of taking additional time off of work, finding childcare,

¹⁴⁰This point captures the requirement put forth by Robert Card that refusals be "consonant with relevant empirical information." He gives the example of refusals to prescribe or dispense emergency contraception that are based on the claim that such medications can disrupt an established pregnancy. Given that the empirical evidence suggests that these medications actually prevent a woman from ovulating, objections to causing the disruption of an established pregnancy cannot ground objections to prescribe or dispense emergency contraception. Card, "The Inevitability of Assessing Reasons in Debates about Conscientious Objection in Medicine."

¹⁴¹The refusal itself and the fact that her physician disagrees with the treatment plan she chooses to pursue may itself cause some burden to the patient. However, such negative impact can be minimized by attention to the way in which a refusal is communicated, as I will describe below.

and arranging for transportation. At the extreme, referral to a willing provider is infeasible and the burden to the patient is that of being unable to act on her autonomous decision, plus whatever is incurred by not receiving the requested care. In the case of a request for emergency contraception, for example, this burden may be that of an unwanted pregnancy; the burden imposed by denial of a request for gender-affirming hormone treatment will be that of the continued distress of feeling that one lives in the wrong body.¹⁴²

It is against this context of the burdens imposed on patients by refusal of care that the physician must consider what her own moral commitments require of her. In addition to weighing whatever commitment gives rise to the objection to the requested medical service (for example, a prohibition against contraception), the physician must also attend to the extent to which a refusal would be a violation of her obligations to promote the patient's interests and of non-abandonment. The question she seeks to answer for herself should be "can I in good conscience provide the care requested by this patient?" rather than "is it permissible for me to refuse this request?"

When the physician concludes after such careful moral deliberation that she cannot provide the patient with the requested service, she identifies that she has what Bernard Williams refers to as a *moral incapacity*.¹⁴³ A moral incapacity in this sense is an incapacity to do something knowingly, in light of (moral) deliberative reasons. It is distinct from a psychological incapacity (arising from, for instance, fear) in that it is the *result* of moral deliberation and is therefore necessarily an incapacity that the agent endorses and with which she identifies. A

¹⁴²Czarniecki et al report that many of the participants in their study took the availability of other clinicians willing to provide the objectionable service in their practice context into account in their own decisions about whether or not to participate in such care.

¹⁴³Williams, "Moral Incapacity."

moral incapacity in Williams's sense is not identical to the judgment that it would be wrong to perform some action. People are often capable of knowingly performing actions that they judge to be wrong. An agent who has a moral incapacity to ϕ both judges that to ϕ would be wrong *and* makes the further claim that she could not bring herself to do it. It is only refusals to provide requested care which stem from the deliberative recognition of such a moral incapacity that are candidates for morally permissible conscientious objection. Moral incapacities are deeply expressive of an agent's character, her identity as a person, in ways that mere judgments that an action would be wrong (but that nonetheless the agent could bring herself to perform it) are not.

It must be this recognition of a moral incapacity that actually *motivates* the physician in refusing the patient's request; and her intention in so refusing cannot go beyond her own actions. Insofar as the physician intends to coerce the patient into choosing a different course of action, or to prevent the patient from pursuing the objected-to service by refusing, she is morally criticizable. In concluding that she cannot provide the patient with the requested service, the physician must not lose respect for the patient as a moral agent or lose sight of the fact that the primary focus of the clinical encounter must remain the promotion of the patient's interests, rather than her own moral values. To this end, she must maintain compassion for the patient, rather than lapse into judgment or hostility,¹⁴⁴ and she must remain willing to promote her patient's interests in whatever other manner she can. The recognition of a moral incapacity should be seen as a constraint on the ways in which the physician is capable of promoting the patient's interests; not as an impetus to give up on rendering help in any form, or as an

¹⁴⁴Recall that this discussion is limited to the question of when it is permissible to refuse a patient's request for a *legal, safe, and effective* medical service. Although there are a number of medical services which meet these parameters that are morally contested, they are all such that reasonable, well-intentioned people who care about doing the right thing may opt to pursue them. It might be the case that hostility or judgment is the proper response to some choices that a moral agent will make; opting to pursue one of the medical treatments that is the subject of this debate is not one of those choices.

opportunity to grandstand or to castigate her patient. Such a constraint does not change the fact that the primary goal of the patient encounter must be to benefit the patient; it only changes the contours of the possible ways in which the physician herself can promote that benefit.

It matters too how the physician communicates her refusal to the patient. She should aim to demonstrate her respect, care, and compassion for the patient even as she refuses the patient's request. The physician should communicate to the patient that she has taken the request seriously. She should acknowledge that despite of her own objections to the requested service, her refusal to fulfil the patient's request places a genuine burden onto that patient in the form of an obstacle to the patient's expression of moral agency and a hindrance to the patient's pursuit of her health-related interests. She must explain to the patient why she is unwilling to fulfil the request, and should do so with an air of humility that underscores the possibility that it is the physician rather than the patient who has gotten it wrong.

The physician should re-emphasize her commitment to caring for the patient in other ways: though she may regard fulfilling this particular request as beyond what she can in good conscience do, in no circumstance is it permissible for a physician to refuse to engage in any further clinical relationship with a patient who wishes to remain in the relationship simply because the physician disagrees with a medical decision that the patient has made or the values underlying that decision. The physician should continue to work with the patient to find ways to promote her interests that are acceptable to both of them, up to and until the point at which another physician takes over that patient's care.

When a physician has deliberated carefully in the way described, has concluded that she cannot offer the requested service to her patient, and has communicated this refusal respectfully and compassionately to the patient while doing what she can to otherwise promote the patient's

interests, her refusal may be morally permissible. Whether this is so, in the end, depends on the burden that the refusal will place on the patient and the quality of physician's moral commitments (that is, whether we judge her to have gotten her moral commitments right or close to right from the third-party perspective). This means that, in principle, almost any medical service may be the subject of a physician's permissible conscience-based refusal given the right context.

However, certain types of refusals are incompatible with the physician holding the required attitudes toward her patient, or are incompatible with the professional moral obligations of physicians, and are therefore never permitted. Refusals to provide medical care to a patient on the basis of that patient's moral commitments or another feature of who she is as a person, including race, sex, gender identity,¹⁴⁵ sexual orientation,¹⁴⁶ etc., are incompatible with the obligation to respect patients as moral agents in their own right and are therefore always wrong. In our personal lives, we are free to choose not to engage in meaningful relationships with another person when we find her moral views or other character traits disagreeable, because we do not owe friendship or intimacy to anyone in particular. In contrast, by professing to be a healer, a physician incurs an obligation of care to any person who suffers from an illness that the physician is equipped to address, an obligation which does not depend on the patient demonstrating that she is worthy of care in some way. This is not an obligation to seek out and care for people of all different demographics: a physician who is motivated to care for a

¹⁴⁵In 2011, The National Transgender Discrimination Survey Report on Health and Health Care found that 19% of trans or gender non-conforming participants had been refused care on the basis of their actual or perceived gender identity. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey."

¹⁴⁶In a survey conducted by the Center for American Progress, 8% of lesbian, gay, bisexual, and queer respondents reported having been refused to be seen by a health care provider because of their actual or perceived sexual orientation, and 29% of transgender respondents reported the same. Mirza and Rooney, "Discrimination Prevents LGBTQ People from Accessing Health Care."

particular population (e.g., poor minority women, or transgender patients) is free to seek employment in a clinic that primarily serves that patient population. At the clinic level, health care organizations can choose to serve only certain populations so long as these choices do not violate federal anti-discrimination laws: some clinics offer discounted or free services and thus only accept low-income patients; the Veteran's Health Administration serves only US military veterans. In contrast, it would be wrong for a physician working at a general teaching hospital to refuse to care for a patient on the basis of that patient's income level or occupation history.

Similarly, refusals to counsel patients about all available medical options, including options which the physician herself objects to, violate the requirement to inform and counsel patients and are thereby impermissible. There are limited circumstances in which intentionally withholding information from patients is permissible. The principle of therapeutic privilege maintains that a physician may withhold information from a patient when doing so is necessary to avoid causing her significant psychological harm, to the point that sharing the information is judged to be medically contraindicated. It would also be permissible to withhold information from a patient at her own request: if she did not want to be told about the results of some genetic screening, or to be informed that testing revealed she had some form of cancer.

It may be thought that if a physician is morally opposed to some medical service, this could exempt her not just from providing that service when it is requested but further from being required to inform or counsel patients about that service. This is not so. Intentionally withholding information about a medical service in an attempt to prevent a patient from pursuing that treatment option constitutes informational manipulation and undermines morally valid consent. What information is shared with patients, at what time, and in what way must be primarily guided by the aim of closing the knowledge gap between the physician and her patient

in order to facilitate autonomous decision-making by the patient, not by a physician's desire to impose her own moral values onto her patient.

When a physician herself refuses to provide requested care, she incurs an obligation to refer the patient to another physician who is willing to provide that care whenever possible. To refuse to refer a patient to another physician in addition to refusing to provide her with a requested service would be to violate the duty of non-abandonment to patients. Finally, the burden imposed by a refusal to administer emergency care without which the patient will die can never be justified by an appeal to the moral commitments of the physician.

VI

The foregoing discussion has focused on the perspective of the physician, and the ways in which she ought to handle conflicts between her own moral commitments and a patient's request for medical care. But patients and physicians do not interact with one another in a vacuum. All clinical encounters occur within the political state, and many occur within the context of a larger health care institution or system.¹⁴⁷ A full treatment of the question of conscience within medicine thus requires some examination of how health care systems may or may not regulate a physician's conscience-based actions, as well as what role the state has in regulating or protecting such actions.

At this point it will be useful to recall the distinction made in the previous chapter between three types of freedoms of conscience: the freedom to hold one's own moral views, the freedom to express one's moral views, and the freedom to act in accord with one's moral views.

¹⁴⁷Physicians in private practice sometimes care for patients outside of the context of a larger health care institution.

In the context of delivering and seeking health care, attempts to regulate the moral views *held* or *expressed* by an agent, or the systematic imposition of costs onto her for the holding or expressing of particular moral views is impermissible. This is true at the level of the patient, the physician, and the health care institution.¹⁴⁸

Neither individual physicians nor health care institutions may permissibly turn away or provide disparate care to patients on the sole basis of a patient's holding or expressing some particular moral views. In the same vein, a health care institution may not discriminate against physicians as employees on the sole basis of their holding or expressing some particular moral view: an institution may not make hiring or firing decisions according to a physician's held or expressed moral views, nor may it otherwise penalize employees for such. It is the proper role of the state to implement such protections as a part of anti-discrimination legislation.

Further, it is generally morally impermissible for a health care institution to impose regulations on physicians as employees requiring them to express moral views they do not hold, nor may a health care institution forbid physicians from expressing their own sincerely held moral views in the course of performing their job. The expression of one's moral views in this context is properly protected by a right to freedom of speech; further, it is required in order for the physician to fulfil her obligation to engage in deliberation with a patient regarding her health care options.¹⁴⁹ Finally, the state cannot require that health care institutions express any

¹⁴⁸Though health care institutions are not themselves moral agents and as such do not strictly possess a conscience or their own moral views, the moral agents who establish and run such institutions may seek to do so in accord with their own moral commitments. A Catholic church, for example, may found a hospital in order to provide medical care in accord with the biblical values of sanctity of life and charity. Although these moral commitments are most perspicuously attributed to the agents themselves rather than to the hospital as an institution, for simplicity we can talk as if the institution has particular moral commitments.

¹⁴⁹As mentioned in the above discussion of a physician's professional moral obligations, physicians should be sensitive to the power imbalance between themselves and patients and so present their moral views and their medical recommendations generally in ways that will minimize the risk of coercing their patients.

particular moral views, nor can it prohibit a health care institution from making its moral commitments known to the public. The liberal, democratic state ought to protect these freedoms of conscience within health care as a matter of anti-discrimination law and protections for freedom of speech.

Now consider the third type of freedom of conscience: the freedom to *act* in accord with one's moral commitments, as distinct from merely holding or expressing those values. Three parties in the medical encounter have moral commitments which may engender conflict: the patient, the physician, and the health care institution. The moral commitments of the latter two parties may additionally come into conflict with the patient's interest in receiving certain forms of health care (even when that interest is not importantly related to one of her moral commitments *per se*). The liberal democratic state has an obligation to protect both the basic welfare interests of its citizens, which include access to health care, and to protect its citizens' conscience-based freedoms. How, then, should these conflicts be approached by the state?

One approach focuses on protecting conscience-based actions performed by physicians from employer interference by prohibiting employers from discriminating against physicians on the basis of those conscience-based actions. This strategy would forbid health care institutions from making hiring or firing decisions or from otherwise discriminating against employees on the basis of their refusal to perform certain medical services on the grounds that doing so would violate their moral commitments.¹⁵⁰ Under such protections, a physician who refuses to provide a patient with medical aid-in-dying, for example, is not liable to lose her job or to suffer punishment as a result of that decision.

¹⁵⁰This approach was put forth by the department of Health and Human Service's 2019 final rule on Protecting Statutory Conscience Rights in Health Care, which was struck down by a federal judge in November 2019.

Existing legislation in the United States which deals with so-called conscience protections for health care providers takes this kind of approach, although with a limited scope. This legislation grants physicians a right to refuse to provide certain specific medical services on the basis of moral or religious convictions. The Church Amendments,¹⁵¹ the Public Health Service Act §245,¹⁵² the Weldon Amendments,¹⁵³ and the Affordable Care Act (ACA)¹⁵⁴ all provide protections for refusals to provide abortion care to patients. The Church Amendments additionally extend protections to refusals to provide sterilizations. And the ACA has separate language protecting refusals to participate in medical aid-in-dying.

These protections are problematic, first, because they fail to provide protection for individuals who *choose* rather than *refuse* to provide these morally contested services on the basis of their moral or religious convictions. If the value of individual physicians being free to act in accord with their consciences or moral commitments is ground for legislative protections for conscience-based *refusals*, then it must also be ground for legislative protection for conscience-based *provision* of care (at least when the medical services in question are legal in the appropriate jurisdiction). But once we recognize that there is good reason to protect conscience-based provision of legal, autonomously requested medical services, then if health care institutions are not justified in making hiring and firing decisions on the basis of a physician's *refusal* to provide some medical service, neither are they justified in making such decisions on the basis of a physician's *provision* of that service. After all, in cases of conscience-based provision of care protecting a physician's conscience can be accomplished without

¹⁵¹The Church Amendments.

¹⁵²The Public Health Service Act.

¹⁵³The Weldon Amendment.

¹⁵⁴The Affordable Care Act.

imposing any burdens onto patients. If the protection of conscience is important enough to sometimes justify the imposition of burdens onto patients, it must also be important enough to justify the imposition of burdens onto health care institutions. This would mean, for example, that a Catholic hospital cannot fire a physician for providing a woman with an elective abortion.

On the one hand, these protections do offer broad immunity for physician conscience and thus maximize a physician's freedom to act in accord with her conscience in a variety of employment settings. But this comes at the expense of the ability of health care entities to determine the scope of the care that they offer in accord with their moral commitments. These legislative protections are extended to health care entities in addition to individual physicians: They prohibit federal funding from being denied to health care entities on the basis that those entities refuse to provide abortions, sterilization, or medical aid-in-dying, and prohibit insurance companies from refusing to reimburse these institutions on the same ground. This suggests that the state recognizes some value to allowing health care entities – not merely individual physicians – to determine the scope of medical care that is supported by their moral commitments, and to provide care in accord with those values (and *only* care that accords with those values). But if employment decisions cannot be made on the basis of a physician's willingness or refusal to provide care in accordance with her individual moral commitments, then health care entities have no recourse by which to ensure that the care they offer does in fact accord with their moral commitments.

In my view, health care institutions should be broadly permitted to determine the scope of legal medical services that they provide to patients. Catholic health systems, for example, may choose not to offer abortions or sterilizations in accordance with the moral and religious values of the moral agents who run them. Accordingly, they are permitted to prohibit the physicians

they employ from providing abortions or sterilizations within their capacity as employees of that health care system (though they may not prohibit their employees from or punish them for providing these services in their off time, for example in the course of volunteer work or as a part of other employment). It is appropriate to enforce such a prohibition with whatever consequences would be appropriate for violating any other workplace policy, up to and including termination of employment.

This is true even if some of the physicians they employ have moral commitments to offering abortion care to women who request it. There is empirical evidence that some physicians who provide abortion care do so out of a deep moral commitment to offer such care to patients, that is, their provision of care is conscience-based.¹⁵⁵ A policy forbidding the provision of such care within this context would, then, conflict with the conscience-based freedoms of some physicians.

But health care institutions do not just sometimes have an interest in *limiting* the scope of services that they provide: they also have an interest in ensuring that they are able to *provide* certain services. Planned parenthood clinics, for example, have made a commitment to offering a range of legal reproductive health care services, including both sterilization and abortion. Accordingly, they must be permitted to make and enforce policies that will enable them to guarantee that such services are available in their clinics. To this end, it is permissible for clinics to create jobs that require their occupants to provide abortions or sterilizations: that is, they may legitimately make decisions about who to hire on the basis of a willingness to provide these services. And, should the person hired turn out to be unwilling or unable to follow through with such provision, it is again permissible for the health care institution to enact whatever

¹⁵⁵Cf. Buchbinder, Lassiter, Mercier, et al., “Reframing Conscientious Care: Providing Abortion Care When Law and Conscience Collide.”

consequences are appropriate for failing to meet any other job requirement, up to and including termination.

What I am suggesting is that it is appropriate for health care institutions to require, as a condition of maintaining employment in good standing, that physicians either provide or refrain from providing certain services, including those to which some members of our society have moral commitments or objections. The permission to create jobs that require or prohibit the provision of certain services is, however, subject to similar limits as were discussed in the context of morally permissible physician refusal of care. Again, a health care system cannot uniformly turn away patients or require physicians to turn away patients on the basis of the moral values of those patients. This is both inconsistent with what must be the mission of any legitimate health care organization, and amounts to discrimination. It may be the case that not every patient is guaranteed to receive care that promotes all of her moral values in every situation, but all patients do have a right to receive basic health care. Invidious discrimination is wrong, in this context just as in other contexts.

Second, a health system cannot impose prohibitions against counseling patients on their legally available medical options, nor may they prevent physicians from referring patients to another practitioner who is willing to provide the requested service. This would be to require that a physician violate the requirement to inform and counsel patients or the requirement of non-abandonment. Further, to prohibit counseling or referral for objected-to services goes beyond the directive to create a health system in which medical care is provided in accord with one's values; it becomes an attempt to impose one's values onto patients by preventing them from receiving care to which one has moral objections. This is to fail to respect patients as moral agents acting in a pluralistic, liberal democratic society.

But within these limits, health care institutions may permissibly determine the scope of medical services that they will offer. This determination may be made, in part, on the basis of moral commitments to providing or to not providing certain types of care. Such requirements do represent barriers to freedom of conscience in the following way: they make it either costly or impossible for an agent who feels herself either compelled to provide abortions or prohibited from providing abortions to gain and maintain employment in a Catholic health system or at a Planned Parenthood. But such barriers to acting in accord with one's conscience are morally permissible.

It should be remembered that health care institutions cannot literally force their employees to provide contested services. It is an obvious point but one worth emphasizing that a physician can always choose to suffer whatever consequences are on offer rather than to engage in an act that she takes to violate her conscience, no matter how steep these consequences are. And while the fact that her employer has a policy either requiring or prohibiting that she offer some medical service should certainly figure into a physician's moral deliberation as a relevant contextual factor, the balance of moral reasons will nonetheless sometimes require a physician to violate institutional policy.

That health care institutions be permitted to require or forbid their employees from engaging in certain types of medical care is necessary in order for those systems to be able to provide care in accord with their values. But, even if one questions the intrinsic value of the ability of a health care institution to protect and promote its own moral commitments in this way, this ability is instrumentally valuable because it provides the state with a mechanism by which to ensure that patients have access to morally contested medical services.

One major concern sometimes raised as an objection to permitting physicians to refuse to provide certain services is that such refusals will result in patients losing access to certain types of medical care. This worry operates on a number of levels: an individual patient may not be able to receive the service she seeks in the timeframe in which it would be effective or desired due to the time required to find a physician or health care institution willing to provide her with it. In some areas of the country, particularly rural areas, there may be no physicians who provide certain contested medical services. If disparities of access fall disproportionately on certain groups – the poor, or particular racial minorities – then such access issues are objectionable not merely because they result in burdens to particular patients but also insofar as they serve to reinforce social injustices. Worries of this kind have been articulated in particular in relation to access to services like medical aid-in-dying¹⁵⁶ and contraception.¹⁵⁷

Permitting health care institutions to make hiring decisions on the basis of physician willingness to provide the medical services that are the subject of this access worry not only allows those institutions to shape the scope of the care that they provide in accord with their moral commitments, but also provides a mechanism through which disparities in access can be addressed. This is because this opens up the possibility for the state to establish hospitals or clinics with a certain number of physician positions that require the provision of a particular service when it is determined that access is an issue in a particular geographic area.¹⁵⁸

A system in which health care institutions are permitted to make staffing decisions on the basis of willingness to perform certain medical services will pose a more stringent limit to

¹⁵⁶Buchbinder, “Access to Aid-in-Dying in the United States: Shifting the Debate from Rights to Justice.”

¹⁵⁷“ACOG Committee Opinion No. 385.”

¹⁵⁸Sometimes, this may take the form of setting up a new health care entity; in other cases the same goal may be achieved by adding physician positions or modifying requirements for new hires at an already existing state health care institution.

physician freedom of conscience than a system in which a physician's conscience-based willingness or refusal to provide a certain type of care cannot be used to deny her a position. But still this is not, all things considered, a very burdensome infringement on freedom of conscience. A physician with a conscience-based objection to performing abortions will not be able to both (1) accept a job that requires her to perform abortions *and* (2) refuse requests for abortions without consequence. But she is free to find work in a health system that does not require the provision of abortion care (and perhaps forbids it). Or, she may enter into private practice, where she will have almost complete latitude to determine the scope of care she wishes to offer to patients. Or, if she is still in training, she can choose to enter into a specialty in which the question of abortion provision will simply be a non-issue (for example, radiology, neonatology, or pathology). All things considered, her freedom is only minimally limited, and this minimal limitation is justified by the larger benefit to the numerous patients to whom access to contested medical care is important.

It may be objected that a physician could find herself living in an area in which all of the positions available to her require the provision of abortion care (to continue this particular example). This could happen, for example, in a rural area in which there is only one obstetrician-gynecologist (ob-gyn) position in an entire county. It is unfair, the objection claims, for the physician to be disqualified from competing for this job. But this would be to prioritize a single agent's ability to pursue her (very particular) version of the good life (i.e., working as an ob-gyn in *this* county while refusing to provide abortion care) over and above the ability of every woman in the area who may seek and be denied such care to shape their own lives in accord with their moral judgments and commitments.

Another objection raises the possibility that the overwhelming majority of ob-gyn positions could begin requiring their physicians to provide abortions, such that it becomes impossible or nearly impossible to find a job as an ob-gyn which does not require abortions care in any area. This worry can be offset by requiring that the state limit the number of positions in which a health care institution may require a physician to provide abortions to whatever number is reasonably necessary to meet the patient demand for abortions. Though religious organizations or other private health care institutions may legitimately seek to promote a particular conception of the good by determining the scope of legal medical care that they provide, the state can have no interest in promoting any one particular conception of the good falling within the bounds of liberal democratic principles. Accordingly, state-run health care entities should default to permitting but not requiring physicians they employ to provide all legal medical care. Requirements to provide care should then be implemented only in order to alleviate access burdens for patients, not to promote a particular moral commitment.

Permitting health care institutions to make hiring decisions on the basis of physician willingness to provide certain medical services will not necessarily solve access problems for all services or in all settings. There simply may not be enough physicians willing to provide some morally contested service, or to provide that service in a particular area of the country, in order to meet patient demand: positions requiring the provision of these services, that is, may go unfilled for want of physicians willing to take them. In such cases, other steps should be taken by the state to recruit people into medicine or into those geographic areas who are willing to provide patients with that service in order to ensure access to health care for its citizens. But another result would be that many of the positions which were (putatively problematically) excluding

physicians who had moral objections to engaging in certain kinds of medical care would likely adjust their requirements were doing so necessary in order to fill them.

VII

A physician's conscience and her moral commitments play an ineradicable role in the provision of medical care. Although attempting to draw a robust distinction between personal and professional morality is not practicable, physicians do incur moral obligations as a result of entering the medical profession. A good physician will take on these obligations as moral commitments to which the mental process of her conscience appeals, rather than merely acting in the ways required by these obligations.

A physician may have moral commitments that lead her to object to the provision of certain medical services: her moral commitments may come into conflict with the moral values of her patients. But because she must also be committed to promoting the interests of patients and to non-abandonment, such requests also engender conflicts within the physician's own conscience. Whether a physician is morally permitted to refuse a request for an objected-to service must be determined on a case-by-case basis, and ultimately comes down to an assessment of the balance of burdens created by limiting a physician's freedom to act in accord with her conscience as compared to limiting that same freedom for the patient and from the denial of effective health care.

Because medical care is provided within the context of health care institutions and the larger setting of a political state, we can also ask what policies these actors should enact regarding physician conscience. The state should protect freedoms to have and express one's conscience for all of its citizens, including those acting in the role of patient, physician, and

health care institution. However, health care institutions should have broad latitude to require their employees to either provide or refrain from providing legal medical services, in accord with their institutional moral commitments. All things considered, this poses only a small limit to physician freedom of conscience while providing the state with a mechanism by which to attempt to ensure that patients have access to all legally available medical care.

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