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What has Kant got to say about conscientious objection to reproductive health in South Africa?

E. Lekunze Fritz

Correspondence
E. Lekunze Fritz, Steve Biko Centre for Bioethics and Health Law, School of Clinical Medicine, University of the Witwatersrand, Johannesburg, South Africa.
Email: 9802181Y@students.wits.ac.za

Abstract

A woman's right to a safe legal abortion in South Africa conflicts with a health care professional's freedom of conscience. Conscientious objection or treatment refusal on the basis of conscience may be protected by the constitution but its morality has not been explored. This study uses Kantian Deontology to elucidate the ethical duties of health care professionals based on the Physician's Pledge. It concludes that conscience is morally empty and that health care professionals have a duty to treat all patients equally irrespective of the condition they present. Drawing on Kantian promise keeping, the study also concludes that health care professionals should place patients health and wellbeing above all other considerations. Using the categorical imperative, the study shows that health care professionals have a perfect duty not to refuse treatment. The study recommends that conscientious objection be rejected in all circumstances except where the psychological wellbeing of the health care professional will be affected. This can be achieved through legislative and professional body regulation of conscientious objection.

KEYWORDS

conscience, conscientious objection, Kant, Moral Duty, Physicians Pledge

1 | INTRODUCTION

A legal abortion performed by qualified healthcare professionals in facilities that conform to minimal medical standards is one of the safest procedures in medical practice with very low morbidity and insignificant risk of death.[1] Approximately 22 million women worldwide who cannot access medically safe procedures resort to unsafe abortions every year, increasing maternal mortality and morbidity.

Health care professionals face a moral dilemma when faced with a request for termination of pregnancy; whether to respect the moral and legal autonomy of a woman to make decisions over her body and the obligations of health care professionals to society or to prioritise the foetus interests. In South Africa, even though the Choice of Termination of Pregnancy (CTOP) Act Number 92 legalised abortion in February 1997 many health care professionals still opt for the latter.[2] Several publications point to the fact that health care professionals cite 'conscientious

[1]Grimes, D.A., Benson, J., Singh, S., Romero, M., Ganatra, B., Okonofua, F.E., & Shah, I.H. (2006). Unsafe abortion: The preventable pandemic. Sexual and Reproductive Health. Lancet. 368(9550), 1908–19.

[2]Ngwena, C. (2004). Conscientious objection and legal abortion in South Africa: Delineating the parameters. *Journal for Juridical Science*. 28(1), 1–18.

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objection' as a *reason* to refuse treatment in termination of pregnancy cases.[3,4,5,6]

McQuoid-Mason writes that a woman's constitutional right to reproductive health is limited by section 15(1) of the Constitution of South Africa, which appears to give healthcare professionals the legal right to refuse to perform an abortion based on freedom of conscience, thought, belief and/or opinion. Even when there is imminent danger to a woman's life, some health care professionals in South Africa still refuse to perform a termination of pregnancy based on conscientious objection[7] alone. It is worth mentioning that any objection conscientious or otherwise that may lead to adverse health consequences for the woman is illegal irrespective of personal beliefs.

The legal status quo leaves many vulnerable women in South Africa without critical health services at their time of need. This raises the question whether conscientious objection, though legal in South Africa, is *ethical*. Given the strong opinions and potential harms of conscientious objection, it is surprising that little academic ethics examines the morality of conscientious objection and its implications in the South Africa context.

There is an enormous body of work done on the morality of abortion which conscientious objectionists often draw from.[8] Though abortion remains a contentious issue, this article does not seek to resolve the issue of the moral status of the foetus or the morality of abortion. It focuses only on the morality of treatment refusal based on conscientious objection and aims to elucidate the moral duties of a health care professional in the face of high demand for abortions services in South Africa. In doing so, it hopes to provide some recommendations that will enhance existing legislation.

This article makes the case that conscientious objection in South Africa is unethical in most circumstances. It provides an evaluation of conscientious objection using the moral theory of Immanuel Kant. Section 1 provides a basic understanding of the concept of "conscience" and how it applies to conscientious objection. Section 2 looks at conscience in the context of morality. Section 3 introduces an ethical framework based on Kantian deontology. Section 4 uses the Physician's Pledge to derive Kantian rules for conscientious objection in South Africa. Section 5 addresses potential objections to my arguments.

2 | FREEDOM OF CONSCIENCE

This section of the article provides a definition of conscience as it relates to morality in order to clarify what it means when "conscientious" objectors cite freedom of conscience as a reason not to participate in reproductive health care.

There are several views of conscience, making it difficult to understand what one means by freedom of conscience. In one view conscience is a human faculty similar to the intellect, the will and imagination. The intellect discerns truth, while the object of the will is goodness and that of imagination beauty.[9] In this view, the object of conscience is to discern moral truths, more like a window of the mind which observes morality that exist in the world or a compass that directs an agent's action towards moral truths.[10] This view of conscience as a faculty of the mind is morally neutral because it merely observes or guides rather than judges an act morally right or wrong.

Conscience can also be viewed as an inner retrospective or prospective moral judge that assesses an agent's actions as morally good or bad, acceptable or unacceptable.[11] In this view, conscience is an inner, independent judge or court of our character. There is a self that acts and a second self that observes the conduct of the first, acting self. Immanuel Kant had this view of conscience stating "*for all duties of man's conscience will, accordingly have to think of someone other than himself..... as a judge of his action*".[12] Giubilini says this conception of conscience is illustrated by Mark Twain's Huckleberry Finn.[13] Huck feels guilty for helping his slave friend Jim escape his owner Mrs Watson. These guilty feelings come from within Huckleberry who is torn between doing what he thinks is the right thing by his friend and the socially accepted principles of the time, according to which Jim was the property of Mrs Watson. This "guilty feelings" view of conscience is unlikely to be what Kant had in mind, envisioning a rational impartial judge making judgements based on reason or the natural law. It is important to emphasise that according to Kant, moral duties are not determined by conscience. For a "guilty feelings" conscience could be prone to unreflected socialisation, manipulation and coercion or what Kant will call passions.[14]

There are other conceptions of conscience, including one from Kant that views it as the motivation to perform our duties. In this

[3]Harries, J., Cooper, D., Strebel, & A., Colvin, C.J. (2014). Conscientious objection and its impact on abortion service provision in South Africa: A qualitative study. *Reproductive Health*. 11(1), 1–7.

[4]Teffo, M.E., & Rispel, L.C. (2017). 'I am all alone': Factors influencing the provision of termination of pregnancy services in two South African provinces. *Global Health Action*. 10, 1.

[5]Harries, J., Stinson, K., & Orner, P. (2009). Health care providers' attitudes towards termination of pregnancy: A qualitative study in South Africa. *BMC Public Health*. 9, 1–11.

[6]Harries, J., & Constant, D. (2020). Providing safe abortion services: Experiences and perspectives of providers in South Africa. *Best Practice & Research Clinical Obstetrics & Gynaecology*. 62, 79–89.

[7]Ngwena, C.G. (2014). Conscientious Objection to Abortion and Accommodating Women's Reproductive Health Rights: Reflections on a Decision of the Constitutional Court of Colombia from an African Regional Human Rights Perspective. *Journal of African Law*. 58(2), 183–209.

[8]Thomson, J.J. (1976). A Defense of Abortion. In J. Humber & R. Almeder (Eds.), *Biomedical Ethics and the Law (pp. 39–54)*. Boston, MA: Springer.

[9]Leach, D.C. (2014). Transcendent professionalism: Keeping promises and living the questions. *Academic Medicine*. 89(5), 699–701.

[10]Symons, X. (2017). Two conceptions of conscience and the problem of conscientious objection. Journal of Medical Ethics. 43(4), 245–247.

[11]Strohm, P. (2011). *Conscience: A Very Short Introduction (pp. 47-48)*. Oxford: Oxford University Press.

[12]Ibid: 46.

[13]A. Giubilini, A. (2016). Conscience. In E. N. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy*. Stanford, CA: Metaphysics Research Lab, Stanford University.

[14]Kant, I. (2013). Groundwork of the Metaphysics of Morals. In R. Schafer-Landau (Ed.), *Ethical Theory: An Anthology*, 2nd edition (p. 485). Chichester: Wiley-Blackwell.

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view, conscience prompts us to do what is right without specifying *what* is right. The important point here is that it seems conscience does not have any moral content. It appears to be an empty box that can be filled with any moral content.[15] It can be used to defend one position say against termination of pregnancy and to defend the exact opposite.[16] For instance, in a paper in 2009 in South Africa, two practicing health care professionals who are Catholics displayed different practical attitudes towards termination of pregnancy based on conscience.[17] One totally refusing to provide termination of pregnancy services while the other stated that she had made peace with the fact that she had to perform her professional duty.

These views of conscience as a human faculty or inner judge make conscience part of one's identity.[18] Hence the common view that conscience has to do with deeply held personal moral beliefs. Conscience does not claim nor present evidence of moral objectivity. It simply holds these views which form part of the identity of the agent. In this view, to talk of the freedom of conscience is to talk of the freedom of the person to what they want. Everyone has a conscience but not everyone acts morally.

This paper accepts part of the first view that conscience is a human faculty but disagrees that there are objective moral truths in the world to be discerned by conscience. It also accepts part of the second view of conscience that conscience holds moral agents accountable prospectively and retrospectively for their actions. I however, argue that the moral standard to which this human faculty holds moral agents accountable is not provided by divine edict or societal norms but by moral theory. The standard can only be normative moral theory based on sound reason.

3 | MORALITY

This section provides a brief definition of morality in order to outline the framework for answering ethical questions according to Kantian philosophy. In everyday language, morality simply means doing what is right according to the values and norms accepted by most members of society. However, the existence of large and heterogeneous societies brings about conceptual difficulties with this simplified definition of morality.[19] The minimum conception of morality views it as the "effort to guide one's decisions and actions by reason. It is to decide and to do that which there are best reasons for while giving equal consideration to the interest of each individual affected by one's decision and/or action".[20]

This minimum conception of morality gives us the basic tools to judge decisions and actions morally right or wrong.

3.1 | Kantian deontology

Kantian Ethics holds that an action is morally right if it follows a principle of morality irrespective of its consequences. The basic framework of deontology ("*deon*" from the Greek meaning obligation or duty) holds that "*an action is right if it is in accordance with a moral rule or principle*".[21] Whereas moral rules were historically laid down by some supernatural entity such as God or natural law, Immanuel Kant sought to determine moral rules and principles by reason alone. In order to determine what is morally right or wrong, Kant proposed what he called the categorical imperative. An imperative is hypothetical if it is a means to something else, but categorical if it commands the right conduct or act without being a means to something else. The first formulation of the categorical imperative states "Act only in accordance with that maxim through which you can at the same time will that it become a universal law".[22] In essence, an act is morally right if the rule on which the act is based can be universalised without contradiction.

Kant also argued that human beings possess intrinsic worth or dignity because they are rational agents.[23] That is, human beings are capable of making the rules of what is morally right or wrong and adjusting their conduct according to these rules. Moral goodness in Kant's view only comes about when rational creatures decide, and act based on good will or knowing we have duties towards fellow man.

3.2 | Moral duty

Duty is defined as an action to which one is bound.[24] Only actions motivated by a sense of "duty" (i.e., actions motivated from a sense of being bound or a sense of owing) have moral worth according to Immanuel Kant. A moral duty or obligation arises out of consideration that, that which is "owed" is right. We can be motivated by sentiment, but sentiments change over time, and we do not all have the same sentiment at all times.[25] A moral duty can only be thought of in terms of "*ought to do*" or "*must do*" irrespective of how one feels about it. If an action is good as determined by a moral rule, then it ought to be done.

Kant distinguishes between juridical duties and ethical duties. Juridical duties are those that can be enforced from outside such as those enshrined in the constitution. While ethical duties arise *a priori* from the rational capacities of the moral agent; this ought not be enforced from outside, for to do so is not morally right.[26] There are perfect duties (negative) which prohibit us from doing something at all times and imperfect duties (positive) which require us to do

[15]Strohm, op. cit. note 12.
[16]Strohm, op. cit. note 11, p. 120.
[17]Harries, Stinson, & Orner, op. cit. note 5.
[18]Strohm, op. cit. note 12.
[19]Bernard, G., & Joshua, G. (2017). The Definition of Morality. In E. N. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy*. Stanford, CA: Metaphysics Research Lab, Stanford University.
[20]Rachels, J., & Rachels, S. (2012). *The Elements of Moral Philosophy*. 7th Edition. McGraw-Hill Education.
[21]Hursthouse, R. (1991). Virtue Theory and Abortion. *Philosophy & Public Affairs*. 20(3), 223–246.
[22]Kant, op. cit. note 14, p. 493.
[23]Rachels & Rachels, op. cit. note 20, p. 137.
[24]Khan, R.I. (2005). Clinicians' Duty to Care; A Kantian Analysis. *Law & Governance*. 9(4/5), 25–36.
[25]Hill, T.E. (Ed.). (2009). *The Blackwell Guide to Kant's Ethics*. Wiley-Blackwell. p.36.
[26]Ibid: 229.

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something.[27] An example of a perfect duty will be that which prohibits us from taking other's property without permission. While an imperfect duty is that which requires a moral agent to save a drowning child when doing so come at minimal cost to the agent. We owe it morally to humanity to save the child.

This paper uses Kantian deontology to derive moral rules from the Physician's Pledge and to determine whether conscientious objection to termination of pregnancy in South Africa is morally right or wrong according to these rules.

4 | DUTIES IN MEDICAL OATHS

This section looks at the ethical duties inherent in the Declaration of Geneva derived from the Hippocratic Oath. Using the moral reasoning of Kantian deontology, it argues that this oath holds an imperfect duty of beneficence, which is the duty of care arising from the special doctor-patient relationship. In addition, the case is made that in South Africa, the oath holds a perfect duty not to conscientiously object to termination of pregnancy. This is because in failing to uphold the oath conscientious objectors violate the duty not to cause harm.

Medical oaths taken at universities throughout the world including South Africa contain ethical principles that physicians and society at large believe are essential to health care practice. Oaths like the Hippocratic Oath originated as a form of social contract between society and medical practitioners[28] and have been used intentionally to prevent the abuse of the core values of medicine. In this regard, medical oaths and ethical codes regained significance following the Nuremberg trials of 1947, which exposed the atrocities of the Nazi regime in Germany. This resulted in the Nuremberg Code which provides stringent guidelines for the protection of human participants in research. The following year saw the adoption of the Declaration of Geneva (or Physician's Pledge) by the second General Assembly of the World Medical Association in September 1948. Essentially, this declaration is a modern reincarnation of the Hippocratic Oath that has guided ethical medical practice for more than two and half millennia.

The Physician's Pledge or Declaration of Geneva "outlines in concise terms the professional duties of physicians and affirms the ethical principles of the global medical profession".[29] These duties are listed and discussed in detail in this section. In taking the oath, health care professionals publicly promise to be committed to these duties. As Kant would put it, the health care professional promises to practice not from her feelings or "inclinations" but to be motivated by a sense of duty. Essentially, the health care professional promises not to practice medicine according to personal religious or "moral" beliefs.

4.1 | I solemnly pledge to dedicate my life to the service of humanity

The word *dedicate* implies a commitment or an "obligation" to use medical skills obtained at university for the service of humanity. That is, to practice medicine out of sense of duty or obligation (*I ought to serve* humanity). Taking the oath constitutes a promise to society that a health care professional will act in a particular way. It is only action undertaken out of a sense of duty to keep the promise inherent in the oath that has any moral worth, according to Immanuel Kant.[30] Humanity in this context can be understood in two senses: First, to serve humanity as in all human beings and secondly, to serve with the ethical qualities that make us human, such as compassion, fellow feeling, sympathy, kindness, goodness, generosity of spirit etc. This pledge establishes the ethical principle of justice, to serve all human beings, i.e., not to discriminate between people based on the treatment required. And it also establishes a duty of virtue through the second meaning of humanity i.e., to serve with kindness, goodness, compassion etc. These two duties will now be looked at in detail with regards to conscientious objection in South Africa.

4.1.1 | Service of humanity

The pledge is to dedicate the health care professional's life to the service of all humanity within the scope of professional practice. As Schuklenk and Smalling put it,[31] health care professionals ought to cater uniformly to everyone within the scope of their professional practice. The health care professional who objects to the termination of pregnancy on the basis of conscience fails in her duty to dedicate her life to the service of all humanity in that they serve everyone within the scope of their practice except those seeking a termination of pregnancy. Schuklenk and Smalling argued that for the same reason that it is not acceptable for a female Muslim health care professional to refuse to treat a male patient, health care professionals cannot morally justify not treating a pregnant woman seeking a medically indicated and safe procedure.[32] To do so will amount to picking and choosing those we can serve based on personal religious and "moral" beliefs which are not good reasons according to the minimum conception of morality.

Kantian deontology derives the moral maxim "*health care professionals ought to serve everyone uniformly*" from this pledge. All actions that conform to this moral rule are then judged to be

[27]Robinson, R. (2018). Duty and Boycotts: A Kantian Analysis. *Journal of Business Ethics*. 149(1), 117–126.
[28]Helmich, E., & de Carvalho-Filho, M.A. (2018). Context, culture and beyond: Medical oaths in a globalising world. *Medical Education*. 52(8), 784–786.
[29]Parsa-Parsi, R.W. (2017). The revised Declaration of Geneva: A modern-day physician's pledge. *Journal of the American Medical Association (JAMA)*. 318(20), 1971–1972.
[30]Kant, op. cit. note 14.
[31]Schuklenk, U., & Smalling, R. (2017). Why medical professionals have no moral claim to conscientious objection accommodation in liberal democracies. *Journal of Medical Ethics*. 43(4), 234–240.
[32]Ibid.

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morally good while those that do not conform are morally wrong. This moral maxim or rule establishes what Kant calls an imperfect duty (i.e., one that cannot be ignored by moral agents but admits of multiple means of fulfilment). Kant gives two examples of imperfect duties, which are the duty to improve oneself and the duty to help others.[33] Imperfect duties are duties of commission which require the moral agent to do something. Kant also points out that that to serve humanity means moral agents have a duty to treat humanity as an end not a means to an end. Treating humanity as an end, means to promote their welfare, avoid harming them, respect their rights and to endeavour as far as possible to further the ends of other human beings.[34] In this case, it means health care professionals as far as possible have to promote the ends that their patients desire. Conscientious objection is unconscionable because it does not conform to the moral rule to serve all humanity. Conscientious objection also does not treat humanity as an end.

The duty to aid others presents the problem of how far a moral agent ought to go to help others without causing harm to herself. Conscientious objectors may agree that they indeed have a moral duty to help everyone but to do so will cause them serious psychological harm preventing them from providing medical assistance to others in need. This argument can be furthered on the grounds of Kantian deontology that a health care professional has a duty to herself to improve her own wellbeing by not providing reproductive health if doing so causes her harm. This of course does not make conscientious objection (refusal to provide medically-indicated services based on reasons other than sound moral objectives or medical indication) morally right. It only establishes an imperfect duty to herself which admits to multiple means of fulfilment. The best way to fulfil this duty would be to remove herself completely from situations where she is called upon to act in ways that cause her psychological harm. She could choose brain surgery or electrical engineering where there may not be such conflicts between her professional duties and her personal moral and religious beliefs.

A second counterargument is that the health care professional has the same moral duty to all humanity including the foetus. The theoretical argument about the status of the foetus as a person is beyond the scope of this article. Suffice it to say that a valid Kantian moral duty towards the foetus can only be established on the basis of morality and not on the basis of personal religious beliefs. Moreover, in terms of the duty established in this section, to prioritise the moral duty to the foetus over moral duty to the mother based on personal religious beliefs is to pick and choose who to serve and who not to serve. Besides, in some cases of neural tube defects where children may be born without a brain, it can be successfully argued that to terminate the pregnancy is compassionately serving the foetus.

[33]Kant, op. cit. note 14, pp. 496–497.
[34]Rachels & Rachels, op. cit. note 20, p. 138.

4.1.2 | Virtue of humanity

The Pledge also includes the duty to serve humanely or with the ethical qualities that make us human. This duty is derived from the second meaning of the word "humanity" in the pledge. Which are the qualities such as compassion, fellow-feeling that make us human. This second duty perhaps goes to the core of the social contract nature of medical practice. For to act kindly, to act with compassion, or with a generosity of spirit, is to act for the benefit of others. This pledge establishes what has been called a duty to care,[35] which holds that those with the means to help others should do so. Kant argued that everyone has a duty to act benevolently within their means. The example often used is that where one sees a child drowning and one has the skill to save the child. Is it possible to universalise the maxim "*I will not help a drowning child*" or "*no one should help a drowning child*"? This is similar to the situation where the health care professional has the technical skill and the vulnerable teenage pregnant girl is about to be drowned by the complexity of motherhood quite often as is the case in South Africa with little or no support. Since we cannot, without contradiction, universalise the maxim that health care professionals with the skill to help should not help, Kant holds that this establishes a duty to care – to act benevolently.

Conscientious objection in principle is inward looking towards personal religious and moral beliefs rather than the outward looking towards the virtues of kindness and compassion. According to the Pledge, the health care professional promises to serve humanity but instead, conscientious objectors serve personal "moral" and religious beliefs. She serves herself and not humanity as The Pledge requires.

4.2 | The health and wellbeing of patient ought to be my first consideration

In applying the technical skills at the disposal of the health care professional, she promises a patient-centred approach. Whereas the previous part of the pledge applies to all human beings, the second promise in the Declaration of Geneva focuses on the individual patient's health and wellbeing. It is perhaps important to clarify here that the "health" of the patient does not merely mean absence of disease. The Preamble of the Constitution of the World Health Organisation (WHO) defines health as "*a complete state of physical, mental and social well-being*".[36,37] In this regard, the health care professional pledges not only to focus on the disease state for which they are trained but also on other aspects such as the mental state and other social determinants of health. This is especially important in the context of pregnancy and childbirth, which are not

[35]Khan, op. cit. note 24.
[36]Nobile, M. (2014). The WHO Definition of Health: A Critical Reading. *Medicine and Law*. 33(2), 33–40.
[37]Ereshefsky, M. (2009). Defining 'health' and 'disease'. *Studies in History and Philosophy of Science*. 40(3), 221–227.

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only biological events but also have wide-ranging cultural and societal implications. The moral requirement to put the health and well-being of the patient above all else is of course not limited only to the situations where there is a medical indication such as imminent danger to the pregnant woman's life, or severe deformity of the foetus to such an extent that their life would be limited to mere existence. A pregnant teenager may elect to terminate the pregnancy because she is emotionally and psychologically not ready to take on the enormous task of motherhood, or because she does not have the financial and family support to give the baby a fulfilling life. In order words, the South African health care professional pledges that to act morally; she has to consider all factors including physical health, and the cultural and socioeconomic determinants of health. This of course is not the case with conscientious objection meaning refusal to consider factors other than the health care professional's personal religious and "moral" beliefs.

From this pledge, Kantian ethics derives the simple moral rule that "the health and wellbeing of the patient ought to come first at all times". For the Pledge means "*I promise to put the health and wellbeing of my patient first at all times*". To act out of motivation to keep the promise is morally good according to Kantian ethics. A decision or an act is morally good in this case if it complies with the rule that the health and well-being of the patient ought to come first. Conversely, a decision such as conscientious objection is immoral because it does not comply with the moral maxim that the health and well-being of the patient ought to come first.

Khan stated that an analysis of Kant's moral philosophy shows he would have advocated a universal duty of care under all circumstances.[38] If it is good to place the interest of the patient first, then it ought to be so in all circumstances without limit. Khan uses the example of severe acute respiratory syndrome (SARS) to argue that health care professionals have no moral justification for placing their fear and anxiety of infection over the health and well-being of the patient. Likewise, there is no moral justification for treatment refusal in the case of conscientious objection based on psychological harm to the health care professional.

4.3 | I will respect the autonomy of my patient and dignity of my patient

A major revision of the Declaration of Geneva took place in 2017. Prior to that, the declaration had received only minimal changes over the last seventy years. In the latest version, it was deemed necessary to explicitly include respect for patient autonomy. This moral rule is central to the doctor-patient relationship and Kantian ethics. It is stating the obvious that conscientious objection to termination of pregnancy does not respect the autonomy of the patient. Women who seek these services have already made the autonomous choice to terminate their pregnancies. Of course, the autonomy of the health care professional is also very important and ought to be respected too. However, as has been noted before, if a person's choices arise from unreflected socialisation, or are due to external forces such as compulsion then the choice is not autonomous.[39] The onus ought to be on the health care professional to prove that their decision to conscientiously object to termination of pregnancy is an autonomous decision arising from their own will having considered all reasons. A conscientious objector may be simply uninformed about the morality of her choice and as such, her decisions may not be autonomous. Kant considers freedom an important human quality and only permits restricting it where it is essential to protect freedom and possible to do so.[40] Besides, health care professionals are free to choose careers outside health care or specialisations that do not require them to perform termination of pregnancies. They are not coerced into taking up these positions of privilege in society.[41,42,43]

4.4 | I will maintain the maximum respect for human life

The word respect here is used as a noun which means having deep feelings of admiration for someone or something elicited by their achievement, qualities or abilities. This is the view held by Immanuel Kant when he says that human beings have intrinsic worth or dignity that makes them valuable beyond all price. Kant presents two reasons for this – first that humans have desires and things that can satisfy these desires have no intrinsic value – their value lies only in that they can satisfy these human desires. Animals on the other hand are too primitive to have self-conscious desires. The second reason Kant gives is that human beings have intrinsic value because they are rational beings capable of making decisions, setting goals and guiding their conduct by reason to achieve these goals.[44]

The moral principle derived from respect for human life is one of Immanuel Kant's famous formulation of the categorical imperative known as the formula for humanity:

> *Act so that you treat humanity, whether in your own person or in another always as end and never as a means to an end.*[45]

To treat people as an end never as a means to an end means treating them well, i.e., furthering their goals as far as we can, avoid

[38]Khan, op. cit. note 24.

[39]Varelius, J. (2006). The value of autonomy in medical ethics. *Medicine, Health Care and Philosophy*. 9(3) 377–388.

[40]Khan, op. cit. note 24.

[41]Schuklenk & Smalling, op. cit. note 31.

[42]Fiala, C., & Arthur, J.H. (2014). 'Dishonourable disobedience' - Why refusal to treat in reproductive healthcare is not conscientious objection. *Woman - Psychosomatic Gynecology and Obstetrics*. 1, 12–23.

[43]Chavkin,W., Leitman, L., & Polin, K., et al. (2013). Conscientious objection and refusal to provide reproductive healthcare: A White Paper examining prevalence, health consequences, and policy responses. *International Journal of Gynaecology & Obstetrics*. 123, (Suppl 3), S41–S56.

[44]Rachels & Rachels, op. cit. note 20, p. 137.

[45]Kant, op. cit. note 14.

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harming them and respecting their rights. Refusal to treat based on personal religious and "moral beliefs" goes against the formula for humanity, as it uses the patient as a means to fulfil the religious beliefs of the objector. In addition, conscientious objection does not further the aims of termination of pregnancy seeker's goals; it does not respect their right (in this case their legal right to reproductive services or the moral right of autonomy over their bodies), and it simply does not care about their welfare.

It is perhaps important here to highlight an example used by Kant to illustrate what he meant by using other rational human beings as a means to an end rather than an end. His example had to do with borrowing money from a friend with no intention of paying back. This is important in this section of promise keeping – where health care professionals are trained at the expense of the state and take an oath promising to dedicate their lives to the service of humanity, to have the utmost respect for human life, to respect patient autonomy, all the while knowing they will not fulfil these promises based on personal religious beliefs. This is what Kant will refer to as manipulating and using other human beings for our own ends and it is morally unconscionable.

Some conscientious objectors interpret the pledge to have the utmost respect for human life to mean that all physical life is sacred and that biological life ought to be preserved at all cost, saying "Christianity has never ceased to emphasise the sanctity of human life and the value of the individual, even the humblest and lowliest, including the afflicted in mind and body".[46] Conscientious objectors derive a perfect duty (one which is owed at all times) not to take life; referring to termination of pregnancy as infanticide.[47,48]

Conscientious objectors further interpret Kant to say a woman who opts for termination of pregnancy is using the foetus (a human being) as a means to an end rather than an end. In this view, termination of pregnancy even in cases of imminent danger to the life of a pregnant woman or severe deformity in the foetus is seen as morally wrong or unacceptable, because it violates the duty to preserve life. This is perhaps why 14% of conscientious objectors in the Western Cape Province,[49] still refused to participate in a termination of pregnancy even in the face of imminent danger to the mother.

There is little merit in this line of thought for several reasons. First, there is no consensus that sanctity of human life is a bioethical principle. There is nothing intrinsic in physical life as far as we know that makes it sacred apart from say the Christian belief that "man is created in the image of God". Saying there is nothing intrinsic in human life that makes it sacred does not mean that it is morally justifiable to take away human life. All I mean by this is that the "personal religious" justification contained in conscientious objection is inadequate to claim that there is something about human life that makes it morally wrong to terminate a pregnancy even in cases of deformity such as spinal bifida which will result in no quality of life to talk of. Secondly, what Kant meant by treating humanity as an end and not a means to an end – which is contained in the pledge to treat life with the utmost respect – has to do with moral actions and a virtuous character rather than a physical property of biological life.[28] Treating human life with the utmost respect according to Kant is to "promote the welfare of others, respect their rights, avoid harming them and generally endeavour as far as we can, to further the ends of others".[50] The well-being of the prospective mother and her family and their ends and the fact that a foetus has no discernible ends to promote are issues beyond the scope of this paper. Nevertheless, it can be successfully argued that a healthy foetus at thirty-four weeks has certain rights that should be respected and that health care professionals should promote their well-being. This argument from biological differences between a four weeks foetus and thirty-four weeks foetus is evident in most legal systems (including South Africa's), that allow termination of pregnancy up to 12 weeks and in some cases beyond 12 weeks. Such an argument will be based on sound moral reasoning not personal religious and moral beliefs as contained in conscientious objection which more often than not ignores the quality of life in its entirety focusing only on some abstract intrinsic quality in human life. This is morally unsound because the basic definition of morality requires that a range of factors are considered as reasons for action.

4.5 | I will not permit considerations of age, disease or disability, creed or ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing, or any other consideration to interfere between my duty and my patient

Having established the duties of care (beneficence), to dedicate life to the service of humanity, to have the utmost respect for life, to respect autonomy, the health care professional further pledges that she should not allow any other consideration to come between her duty and her patient. In essence, patient-centred care will consider nothing other than the patient and her well-being. Kant will call this a perfect duty – because it has to be done at all times - to omit all other considerations such as social standing, race, gender etc. An act is morally right if it does not allow other consideration to come between the physician and her duty to care for the patient.

Conscientious objection places the personal religious beliefs of the objector ahead of the health and well-being of the patient. In this regard, conscientious objection is morally unacceptable because it violates the moral rule that the health care professional ought not to

[46]Baranzke, H. (2012). "Sanctity-of-Life" — A Bioethical Principle for a Right to Life? *Ethical Theory and Moral Practice*. 15, 295–308.
[47]Cherry, M.J. (2013). What are our moral duties? Critical reflections on clinical equipoise and publication ethics, clinical choices, and moral theory. *Journal of Medicine and Philosophy*. 38(6), 581–589.
[48]Cherry, M.J. (2011). Sex, abortion, and infanticide: The gulf between the secular and the divine. *Christian bioethics: Non-Ecumenical Studies in Medical Morality*. 17(1), 25–46.
[49]Ngwena, op. cit. note 7.
[50]Rachels & Rachels, op. cit. note 20, p. 138.

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allow other considerations to come between her and the patient. It is unconscionable to place the healthcare professional's subjective moral judgements ahead of the health and well-being of the patient.

4.6 | Other duties from medical oaths

There are other duties derived from the medical oath such as respect for confidentiality, fostering the noble traditions of medicine, to practice with "conscience" and dignity and in accordance with good medical practice etc. These are not listed and expounded upon because the five highlighted above clearly demonstrate that conscientious objection contradicts the pledge that all health care professionals make. Perhaps, it should be clarified that the word "practice with conscience" in The Pledge morally mean conscientiousness. It certainly does not mean that each health care professional can practice with their subjective personal religious and moral beliefs.

I have demonstrated that health care professionals have a duty to care for all human beings without exception and that conscientious objection violates this moral rule because it chooses not to serve some human beings. There is a duty to place the health and well-being of the patient above all other considerations which conscientious objection violates by placing personal religious beliefs ahead of the medical presentation. More importantly, health care professionals voluntarily accept these duties by making the pledge. To break their oath is to act immorally and this is unconscionable.

4.7 | The duty not to conscientiously object to termination of pregnancy

It has been shown above that conscientious objection to the termination of pregnancy runs counter to duties established in medical oaths. But the question remains whether conscientious objection in itself is morally wrong rather than that it simply runs contrary to these voluntarily acquired duties. Using Kant's first formulation of the categorical imperative I show that conscientious objection to the termination of pregnancy is morally wrong and that health care professionals therefore have a duty not to conscientiously object.

The categorical imperative states "act as if the maxim of your action were to become by your will a universal law of nature".[51] Using this principle, Kant argues that moral agents have a duty not to perform acts that cannot be universalised without destroying the very nature of the act. Kant derives a perfect negative duty (an act we ought to refrain from doing at all times) for false promising by using the categorical imperative. We cannot universalise false promising for example without destroying the very nature of promise. Therefore, we ought to always refrain from false promising.

[51]Kant, op. cit. note 14, p. 493.

Health care professionals have a duty not to conscientiously object to termination of pregnancy services because such an act cannot be universalised without destroying its very nature. Conscientious objection really means the ability to cite personal religious and moral beliefs as a reason not to provide professional and legal services. Universalising this maxim means every health care professional or any professional for that matter can cite their personal religious and moral beliefs as reason not to perform their professional duties. This maxim allows farmers for example to cite their personal religious beliefs as a reason not to sell produce to people of a particular religion or ethnic group or sexual orientation. This is not only a contradiction of "conscientious objection" but also of the nature of what it means to be a health care professional or a professional. No society finds it moral to allow such discrimination from a farmer or a cobbler. Universalised conscientious objection on the basis of personal "moral" and religious beliefs destroys the ability of the health care profession to bring relief to the suffering and promote their well-being. It takes away much needed skills. Moreover, it overburdens those who provide such services, leading to burnout and people leaving the profession.

It is perhaps important to note here that the Declaration of Geneva contains a pledge to foster the honour and noble traditions of the medical profession. Conscientious objection brings into disrepute the honour of the profession by requiring a pledge but allowing non-adherence to it. Also as mentioned above, an increased workload for colleagues who do not conscientiously object takes a toll on the entire system. The duty not to conscientiously object is similar to the duty not to deprive others of what belongs to them. Conscientious objection deprives medical practice of its good reputation by not keeping the profession's pledge and society viewing the profession negatively because of this. Health care professionals motivated by their duty towards the honour and noble traditions of the medical profession ought not to conscientiously object to reproductive health services.

5 | POTENTIAL OBJECTIONS

This section addresses potential objections to the arguments I have made so far. Notably, a critic may be right to contend from the utilitarian perspective that the capacity to feel pain and pleasure is all that matters in deciding the moral status of entities and morality of specific actions. In light of this, the critic could contend that the position I take in this paper does not seriously consider the foetus as a sentient being who could also feel pain. The health care professional would be justified in this instance to take the termination of pregnancy as violating their professional duty not to cause harm and undermining the moral status of the foetus. In response, I wish to direct the reader's attention to what my argument is not about. First, this article does not attempt to resolve the issue of the moral status of a foetus or what ethical standards ought to be employed to make this judgement. Moreover, it is not always the case that utilitarians agree on whether and how foetus can have a moral status. For example, the famous preference utilitarian, Peter Singer contends that for a foetus to have a moral status, it needs to

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be conscious of its existence and will the insistence to continue existence. These capacities are generally lacking in a foetus.[52] Second, the reader would also notice that suppose foetus can feel pain and pleasure, and based on this, entitled to certain rights and privileges like the right to life. My main contention is that this argument ought to be morally justified. However, what appears to be the case is that termination of pregnancy is often denied on the basis of "conscience" which I argue is morally vacuous.

Another critic may contend that the novelty of this paper is the claim that conscientious objection – to abortion – by physicians is self-defeating and could potentially cause the public to lose faith in the medical profession as an enterprise from the Kantian universalizing maxim perspective. Notably, the first major problem with applying Kant's "tests" of universalising a maxim (to conscientious objection) and asking if it leads to a contradiction in conception of the will, is that Kant's examples of maxims are all about individual acts and tested against what would happen if everyone else acted on the same maxim. What this implies is that the universalizing maxim or principle cannot be applied to a sub-group or a sub-culture like a profession since it is, in fact, a universal moral law which ought to apply to all rational actors. In view of this, the critic could contend that I have not demonstrated to a significant degree whether and how the universalizing principle applies to medical professionals, in ways that imply that conscientious objection by them would be unacceptable to other rational actors outside this profession. The follow up to this criticism is to demonstrate that the inherent contradiction embedded in conscientious objection will undermine the objector's goal to object. This requires that one can ask "If everyone else acted on my maxim, would I still be able to achieve my aim, by acting on this maxim myself". Unless that aim/intention would be thwarted by others also acting on the maxim, there would be no contradiction in conception, and no perfect duty.

In response, the reader should notice what my claim is, that is, I claim that when individuals take the Physician's Pledge, they take the oath as individuals, as well as object as individuals, and not as a profession. In this regard, the universalizing maxim applies to them. Nonetheless, the preceding is not sufficient to demonstrate how conscientious objection may be self-defeating. To justify this claim, notice that suppose a physician who takes the oath promises to cater to the well-being of everyone without meaning to keep that promise. In that case, every other person or society would know, and may likely be discouraged from using their services. Suppose a pregnant young girl knows that orthodox physicians who promise to cater to the wellbeing of all in the society also deny abortion to those who request it. In that case, they will refuse to use orthodox services as is the case in South Africa where many pregnant young girls use backstreet services.[53] Suppose the objector's goal is to object – within this context, to abortion. And suppose pregnant young girls stop engaging their services. In that case, their capacity to object is undermined. Does this imply that physicians may become happy when individuals stop engaging their services? Suppose the goal of the health care professional's objection is to prevent harm to unborn foetuses and all others object, and women end up using backstreet services which cause harm. Has this goal of not causing harm been achieved? Whether the goal is to merely cite their personal religious believes as a reason not to perform professional duties owed or to prevent harm to foetuses, conscientious objection universalised according to Kant prevents the health care professional from achieving her goal. It only works if exceptions were made for the individual actor which is contrary to Kant's test. Suppose her goal is to preserve her personal moral and religious believe. Then she acts out of self-interest and her actions carry no moral worth according to Kant.

In addition to the foregoing, I call the reader's attention to Kant's distinction between actions that are undertaken out of an obligation to the moral law and those that may be undertaken out of personal interest or inclination. Kant uses the example of a shopkeeper who may refuse to overcharge an inexperienced customer because it is not in his interest to do so. This action carries no moral worth even though the shopkeeper may serve all customers honestly. Suppose a health care professional contemplates the outcome of universalising conscientious objection as highlighted above and decides not to object because her intended goal to object will not be achieved. Has she acted out of duty to the moral law according to Kant? To act out of self-interest rather than an obligation to obey the natural law carries no moral worth. Likewise, having established that conscientious objection contradicts what it means to be a professional and universalising it means the objector may not achieve her goal to object, she is duty bound to obey the natural law not to object – out of a good will to do that which is right. To treat all her patients fairly according to the promise she made.

Another critic may object to the narrow focus on the ethical dilemma of conscientious objection to abortion services without also considering analogous circumstances such as a Jehovah's Witness Physician not wanting to be involved in blood transfusion services; refusal to prescribe puberty blockers for a transgender teen; refusal to provide a medical record for a gay person wanting to adopt a child etc. The question the critic may ask is whether I am fully committed to the truth of my claim in any hypothetical situation in which a physician might hold strong personal or religious objections to some medical service they are legally or professionally required to provide. Let's imagine a different context the critic may say, one in which the law not only allows physician assistance in dying, but it also actually encourages it in people over 80 without the means to financially support themselves. Physicians are now being told that, as a standard practice, they should offer the possibility of a "suicide" pill to all terminally ill patients and those over 80. Would I be as prepared to support the idea that because the physician promised to put the patient's interests first in their professional oath, it would be "unconscionable" for them to place their personal or religious views above their patients right to treatment in the form of a "suicide pill", which is just providing a service after all? Or would a physician opposed to their country's one child policy be wrong to refuse to abort perfectly health foetuses just because the mother already has one child? In other words, is there not ever a time in which the deeply held ethical convictions of a physician can be rightly prioritised over whatever the profession or the

[52]Singer, P. (1993). *Practical Ethics*. 2nd edition. Cambridge: Cambridge University Press.
[53]Amnesty International. (2017). Briefing: Barriers to Safe and Legal Abortion in South Africa. London, UK. Retrieved July 14, 2023, from https://www.amnesty.org/en/documents/afr53/5423/2017/en/

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law stipulates? Perhaps there is some place for conscience, after all the critics may say.

In response, I agree that there is a narrow focus on abortion to in South Africa due to the urgent need. I draw the reader's attention to my main claim that the ability to cite personal moral beliefs as a reason to refuse professional services is unconscionable. Conscience as I have argued is morally vacuous. Treatment refusal based on conscience alone is unconscionable when applied to objection to participate in blood transfusion services for the same reasons provided above. If the goal of the Jehovah's Witness physician is merely to object, then universalising the maxim meets with the same contradiction that people will not trust their services and go elsewhere. If all Physicians were to refuse to participate in blood transfusion services, some patients will die. My claim is that there is no moral justification for refusing to participate in blood transfusion services based on conscience. All objections ought to be justified on moral grounds and it will be unconscionable to object to prescribe puberty blockers or provide a medical record on such grounds. This is not to say moral arguments cannot be made for refusing to provide services in any of these hypothetical cases. My claim is that citing personal moral beliefs is not a moral argument and does not carry any moral worth according to Kant.

The final potential objection is that the paper merely supports the law as it is in South Africa. Would I perhaps for example advance the same arguments if it were hypothetically legal to end the lives of those over eighty years old with no means to support themselves and health care professionals objected based on conscience? In response, I would like to draw the reader's attention to the point that the law in South Africa protects freedom of conscience. However, I argue that conscience is morally vacuous and that it is insufficient to cite conscience as a reason for treatment refusal in cases of termination of pregnancy. I contend that there are sufficient moral grounds to object to a hypothetical law that allow health care professionals to end the lives of those over eighty years old without resorting to conscience. The personhood of an eighty-year-old who wishes the continuance of their life and their right to life are not up for debate. Moreover, Kant is very clear about the moral worth of autonomous decisions made by the eighty-year-old. The law cannot take away the autonomy of an eighty-year-old to make their own decisions. I cannot foresee a scenario where there is a juridical duty to impose death on all eighty-year-olds because they do not have a means to support themselves. Besides, the Kantian example against suicide[54] can be sufficiently applied even if the eighty-year-old were to voluntarily choose to end their life when they reason that the continuance of their life threatens more troubles than it promises agreeableness. The debate on Kant's view on assisted suicide is ongoing[55,56] and beyond the scope of this paper.

6 | CONCLUSION

The primary objective of this paper as set out above is to show that conscientious objection to termination of pregnancy runs contrary to a health care professional's oath. Using the Declaration of Geneva which contains age-old bioethical principles, I identified duties or obligations of a health care professional and showed that conscientious objection in principle runs contrary to these principles. For example, a health care professional has the ethical duty to treat all human beings equally without discrimination. However, the right to cite personal moral and religious beliefs as a reason not to perform this duty means health care professionals can exclude some human beings from their duties. Based on this, I draw the conclusion that conscientious objection is not moral because it allows health workers to fail to perform their professional duties and more importantly, it breaks promises which should be kept according to Kantian morality. Conscientious objection is therefore in this view unconscionable.

I have also demonstrated that health care professionals have a duty not to conscientiously object based on the first formulation of Immanuel Kant's categorical imperative. This is because conscientious objection cannot be universalised without taking away from the profession. Kant calls the type of duty that prohibits action at all times a perfect duty. I have also addressed potential objections to this application of the first formulation of the categorical imperative by demonstrating that society will hold the objector to account preventing her from achieving her goal of treatment refusal.

Finally, I have answered the counterargument that there may be circumstances where refusal to provide termination of pregnancy services is moral and permissible. Such cases will have adequate moral justification in normative moral theories such as Kant's formula for humanity. These cases cannot be justified on the basis of personal religious beliefs that claim sanctity of life. I therefore conclude that there are no cases where termination of pregnancy can be refused based on conscientious objection which I define as the right to cite personal moral or religious beliefs as a reason to refuse treatment and as such conscientious objection is always morally wrong and unconscionable.

It may be that conscientious objection requires regulation in South Africa given that this concerns a woman's right to autonomy over what happens to her body. While there is no moral justification for conscience-based objections, legally enforcing duties may cause psychological harm to the genuine objector. Fortunately, Kantian analysis shows certain duties are duties of right whose fulfilment can be brought about by coercion or external incentives.[57] The way forward in South Africa may be to explore Kantian thought to find ways to preserve the

[54]Kant, op. cit. note 14.
[55]Budić, M. (2018). Suicide, euthanasia and the duty to die: A Kantian approach to euthanasia. *Philosophy and Society*. 29(1), 88–114.
[56]Brassington, I. (2006). Killing people: What Kant could have said about suicide and euthanasia but did not. *Journal of Medical Ethics*., 32(10), 571–574.
[57]Ferrara, A. (2022). Moral Duties and Juridical Duties: The Ambiguity of Legal Ethics Considered Through the Prism of Kant's Metaphysics of Morals. *German Law Journal*. 23(1), 117–129.

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autonomy of a woman to make decisions over her body without harming those with genuine moral reasons to object to termination of pregnancy.

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CONFLICT OF INTEREST STATEMENT

No interest to declare.

ORCID

E. Lekunze Fritz http://orcid.org/0000-0002-7573-2228

AUTHOR BIOGRAPHY

E. Lekunze Fritz is a PhD candidate at the Steve Biko Centre for Bioethics and Health Law, University of the Witwatersrand, Johannesburg, South Africa, and a scientist at Wits Diagnostic Innovation Hub. His research interests are in Molecular Medicine and the application of Kantian thought to genetic responsibility.

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