A couple months ago I ate lunch with a friend who has been a faculty member and nurse for more than 30 years. Recently, her husband took a job as a faculty member at a state university and she applied for a part-time position as a nurse in their university clinic. After volunteering for a few weeks, she discovered that she would be required to dispense “morning-after” pills on a routine basis. She objected to this on the grounds of her Christian faith and was promptly told that the university would not hire her if she would not dispense the pills. This is just one example of the many conscientious objections that frequently arise in healthcare.

Unfortunately, due to technological advances and our rights-based culture, these objections may become more common over time. For situations like this, the conscience clause was created to protect health care workers from discrimination, punitive action, or job loss because they would not perform a particular act that was against their beliefs (Feder, 2005). In order to appreciate fully the conscience clause and its ramifications, this article defines and explains the development of the conscience clause and then examines how potential restriction or elimination of the conscience clause will negatively impact healthcare and our personal freedoms.
DEFINITION OF CONSCIENCE
My first exposure to the word “conscience” came from Jiminy Cricket in the Disney film *Pinocchio* when he sang of the need for Pinocchio to “always let your conscience be your guide” (Disney, 2012). The words of the song instruct Pinocchio to avoid “temptation” and “take the straight and narrow path” by following his conscience (Disney). To Christians, these are words with obvious spiritual overtones. Yet with respect to conscience and the conscience clause, some claim that it is necessary to separate religion from the idea of conscience. For example, Lynch (2008) argues that we weigh religious beliefs and associations too heavily and inappropriately narrow the issues surrounding the conscience clause when secular moral beliefs and professional ethics are just as important. She also suggests that philosophical definitions of conscience are too restrictive, true conscience may have different intensities, and that normative correctness should be our primary guide. She urges that we should focus on the legal facts related to the conscience clause, not on the philosophical underpinnings. However, the very nature of the word conscience directly contradicts her arguments about how the medical community defines it. Exploring each of these arguments separately will help clarify the issues.

SEPARATE RELIGION FROM CONSCIENCE
According to Merriam-Webster’s dictionary (2013), conscience is “the sense or consciousness of the moral goodness or blameworthiness of one’s own conduct, intentions, or character together with a feeling of obligation to do right or be good.” As a Christian, my religious beliefs define right and wrong and motivate me toward right action. Although laws and professional codes may serve as guides, I determine the rightness or wrongness of those laws and codes through the lenses of my Christian beliefs and virtues. According to Genesis 1-2, humans are made in the image of God, and as such, we have an awareness of right and wrong. St. Paul makes this point explicit in Romans 2:14 and 15:
For when Gentiles who do not have the Law [the Bible] do instinctively the things of the Law, these, not having the Law, are a law to themselves, in that they show the work of the Law written in their hearts, their conscience bearing witness and their thoughts alternately accusing or else defending them (NASB).

Therefore, the conscience is rooted in that image of the one true God that is within all individuals (written in their hearts). For Christians, Scripture and the Spirit of God guide the conscience, therefore many Christians understand conscience to be associated with the activity of the Holy Spirit. The Holy Spirit is the Counselor whom Christ sent to guide us into all truth, teach us to abide in Him, to understand His love, and to keep His commandments (John 14:16-20). The Holy Spirit discloses the spirit of God to us through our spirit (John 14:21).

At the same time, Scripture reminds us that we can be deceived. According to Proverbs 14:12 “There is a way which seems right to a man, but its end is the way of death” (NASB). The only way of knowing what is truly right is to have a standard on which to rely that goes beyond our human conscience. That standard is the revelation of God in the scriptures of the Old and New Testament, illumined by the work of the Holy Spirit in the mind of the believer. As a Christian, therefore, it is not possible to separate my conscience from my religion because my religious beliefs inform and guide my conscience. People who do not rely on the Bible or the Holy Spirit to guide them turn to themselves and/or to codes and laws for the standard of determining right or wrong. Let us examine those concepts.

HISTORY OF LAW
What is the origin of law? Societal morals originate law. The traditions and beliefs of right and wrong in human conduct, primarily based on religion, define morality. Opinions or preferences should not determine moral standards. This morality, when widely shared, creates a stable community as people use their collective con-
sciences to enact laws to govern the community. The law is then the minimum standard by which all people in a society are bound, but this normative morality is the basest of morality. Consequently, any change could potentially undermine the social moral consensus.

When people abandon absolute moral standards, previously unacceptable behavior is seen as acceptable. These changes lead to the creation of new “rights” that people use to challenge the beliefs and practices of those who still adhere to the previously accepted standard. When the majority turns these new rights into law, the government potentially infringes on the conscience of those who believe otherwise. Therefore, decisions of conscience require a stronger foundation than the law.

Morality is that higher standard that helps form our ethical standards of conduct. Contrary to Lynch’s argument, moral philosophy drives ethics because ethics is the systematic study of moral conduct and moral judgment (Husted & Husted, 2001). “It is a system of standards to motivate, determine, and justify actions directed to the pursuit of vital and fundamental goals” (Husted & Husted). Professional codes of ethics, like the nursing code of ethics, are more likely to be right because of their moral foundation (as opposed to legal foundation). The code of ethics is then the normative morality for the nursing profession that guides nurses who face ethical dilemmas. Nevertheless, people are fallible and therefore ethical codes are fallible. Even if an entire profession comes together and unanimously votes to enact a particular code, that fact alone does not make the code right.

Who is to say what is absolutely moral or absolutely right or wrong? Do absolutes exist? If one say, yes, there are absolutes in life, one has made an absolute statement. If one says no, there are no absolutes in life, one has still made an absolute statement. Hence, just by logic, there are absolutes of some sort. Similarly, there are moral absolutes. If there was not, we would have chaos because every individual would do whatever they thought was right. That is why laws exist. As we know, some laws are conditional or situational. Is it wrong to take the life of another human being? Morally, yes, murder is absolutely wrong. You cannot murder
another person without having it negatively affect you physically, psychologically, spiritually, and socially. Whether killing is legal or not depends on the situation. Legally, you may be protecting your household, or fighting in a war, in which case it might be conditionally acceptable to kill.

According to the law, what is the difference between killing and murder? Murder is the taking of another life with malicious intent. One of the principles of the law is that if you can show intent then the legal punishments are always more extreme. Murder is always absolutely wrong. It is wrong because it is based on the moral intent of the individual. Knowing that there are absolutes, the conundrum of where to turn to define those absolutes must be faced. The law should not be that standard because it is the lowest common denominator; not the best standard of what is ethical behavior in healthcare.

To accept governmental control of ethical behaviors in healthcare is at best to accept the basest of social mores. Therefore, professional organizations use ethical codes instead. But since ethical codes in healthcare cannot encompass what all individuals believe, the conscience clause protects individuals from having to act against their own values and beliefs. The ethics of healthcare cannot be systematized sufficiently to adjust to all situations because no two situations are ever the same (Mitchell, 2012). That is why we must retain the right for each individual, be they healthcare workers or patients, to make a decision based on their beliefs, within reason, or to opt out of procedures or behaviors that violate their beliefs.

**HISTORY OF CONSCIENCE CLAUSE**

The conscience clause in health care is a legal clause that allows individual healthcare workers to voice a conscientious objection to some action or procedure performed in healthcare. It is difficult to determine the precise time in history that conscientious objection began in the United States but according to Landskroener (1991) the principle of conscientious objection dates from colonial times when militias exempted conscientious objectors from military service. Most objected to the killing of any person, even in war,
because their religious beliefs led them to believe it was murder. This is pertinent to healthcare today because some of the actions that healthcare workers are asked to do—such as destroying fertilized embryos, prescribing, filling, or administering drugs that are abortifacient, and abortions—are equal to murder.

There are other pertinent examples of conscientious objection. In 1922, Oregon mandated that all parents send their children ages eight to sixteen to public school (O'Scannlain, 2007). In the case of *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, the Society of Sisters, acting on behalf of the children’s parents, indicated that the law infringed on the parents’ religious right of conscience to raise a child according to their own beliefs. The Supreme Court of the United States agreed ruling that the act violated the “liberty of parents and guardians to direct the upbringing and education of children under their control” (O'Scannlain, para. 3). Religious conscience, to freely educate a child based on the moral beliefs of the parents, is part of the parental rights of liberty.

In 1942, the West Virginia Board of Education required all public school children to salute the American flag and expelled noncompliant children (Oyez, n.d.). Children who were Jehovah’s Witnesses refused to salute the flag because to them it was idolatry. In *West Virginia Board of Education v. Barnette*, the Supreme Court ruled that this was a violation of first amendment rights. In writing for the majority, Justice Robert Jackson wrote “if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” (Oyez, para. 3). Decisions of conscience in healthcare should not be determined by a politician. Religious conscience is part of the healthcare workers’ rights of liberty, to practice their employment in a manner consistent with their moral values.

These cases of conscientious objection demonstrate a consistent pattern established over hundreds of years that government has never forced someone to act against their own beliefs. Since *Roe v Wade* (1973) this principle has been applied to healthcare
practice. *Roe v. Wade* reflected the philosophy that our bodies are ours to treat as we wish, as are those of our children (or unborn children), which has had deleterious consequences including increases in abortions, addictions, crimes of perversion, abuse, negligence, violence, suicide, and homicide. The very words we use have changed as the unborn baby became a fetus, and the fetus became a byproduct of conception. Scriptural teaching patently opposes this philosophy because we are created in the image of God.

The 1960s also began a paradigm shift from one of not-for-profit organizations to for-profit healthcare companies. The practice of medicine became the business of healthcare. The patient became the client. This had adverse social consequences. Instead of seeking and following a healthcare provider’s advice, clients negotiate their care and shop around until they find a doctor that does what they want. Instead of being able to trust the doctor to do what is best, people wonder if the doctor orders the procedure for financial gain. It is an era where the worth of a single life has decreased. The integrity of the individual is no longer valued. Prior to *Roe v. Wade*, the majority of society valued the life of the baby over the personal freedoms of the mother, therefore objectionable procedures, like abortion, were illegal and a conscience clause was not necessary.

The development of the term conscience clause for healthcare occurred following *Roe v. Wade* in 1973 (Feder, 2005; Lynch, 2008). In response to *Roe v. Wade*, proponents of religious liberty convinced Congress to pass the Church Amendment, named for its sponsor Senator Frank Church (D-Idaho), which “states that public officials may not require individuals or entities who receive certain public funds to perform abortion or sterilization procedures or to make facilities or personnel available for the performance of such procedures if such performance ‘would be contrary to [the individual or entity’s] religious beliefs or moral convictions.’” (Feder). In 1976, Congress also passed, as it has every year since, the Hyde Amendment which prevents government run healthcare entities and entities receiving government funding from funding abortion services (National Right to Life Committee, 2008).
Besides the national laws, between 1973 and 1979 almost every state passed some form of conscience clause protecting healthcare workers or entities from repercussions due to refusal to act against their own convictions (Feder). Then in the 1990s, abortion advocates pressured medical schools to require students and residents to learn to perform abortion procedures (Chervenak & McCollough, 1990; McCullough, Steinauer, DePineires, Robert, Westfall, & Darney, 1997; Westhoff, 1994) to guarantee the right to abortion would always be available. However, pro-life medical students requested protection of their rights to refuse to learn to do the abortion procedure if it was against their conscience.

This produced more national attention on the conscience clause, which resulted in the Bush administration successfully supporting the Hyde/Weldon Conscience Amendment in 2004 (National Right to Life Committee, 2004). The language of this amendment protected any health care worker, organization, insurance company, health care facility or associated company that received federal funding from being forced to provide medical care or services that contradicted their own personal or corporate beliefs (National Right to Life Committee, 2004). These revisions clarified that all individual healthcare workers have a personal, federal, right to protection from being forced to perform healthcare acts of any type that go against their conscience. This is necessary since medical advances in pharmacology now allow us to abort a baby just by the mother swallowing a pill.

Nurses or pharmacist who object to dispensing or administering these medications were not necessarily protected by the Church Amendment because courts could potentially construe that administration of a pill is not a surgical procedure. In addition, the Church Amendment does not address procedures like genetic testing to find out if a baby is likely to have a specific disease. Conscientious objections to this testing occur because the results may lead to a decision to have the baby aborted.

**IMPLICATIONS**

We are now entering a new era in healthcare. For the first time
in the history of the United States there is a national healthcare system that will be fully in effect beginning in 2014 (H.R. 3590, 2010). The danger is that with increased governmental control, individual rights may be diminished. The recent governmental activities concerning the conscience clause are evidence of such. In February of 2011, the Obama administration revised the Hyde/Weldon Conscience Amendment back to provide conscience protections only for physicians and nurses who do not want to perform abortion or sterilization procedures. Matters of conscience should not and cannot be limited to just a couple specific procedures. According to the Obama Administration, this adequately protects the healthcare workers right of conscience. However in 2004, Catherina Censon-DeCarlo, a nurse at Mt. Sinai Hospital in New York, refused to participate in an abortion procedure on religious grounds but was coerced by the hospital into assisting with a second-trimester abortion. She brought suit because her right of conscience was violated, but the court dismissed the case because the Church Amendment does not allow individuals to sue to protect their rights (James, 2011). Clearly, the Obama administration was incorrect. Current laws do not protect rights of conscience, even in the case of the abortion procedure.

The healthcare profession is in an era of increasing ethical dilemmas. To say that matters of conscience relate only to abortion is ludicrous. The Obama Administration’s revisions to the conscience clause is a radical change to the longstanding tradition of not forcing someone to act against their own beliefs. To remove these rights from healthcare workers at this crucial hour, is problematic. Opponents indicate that if healthcare workers do not provide the service that the patient requests, then the patient may be forfeiting his/her rights. Yet, there are not easily identifiable instances of a patient forfeiting his rights. In this country, there are plenty of healthcare services available in a timely fashion so that a patient may be inconvenienced, but never forfeit, his/her rights at the cost of the healthcare worker’s conscience.

Many healthcare workers who enter the profession do so implicitly because of their moral beliefs and their desire to help
humankind. The idea of telling those who have conscientious objections to certain acts or procedures that they should not go into that profession is yet another way of taking away individual rights. It is discrimination. This may seem far-fetched, yet look at the opening paragraph of this article; it is already happening. The moral ramifications of removing people of faith, particularly Christian faith, from the healthcare profession are unimaginable, or to be more precise, unconscionable. The result would be a business just as willing to kill as to assist someone to live.

References


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